

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-1229

B
Pd-S

United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

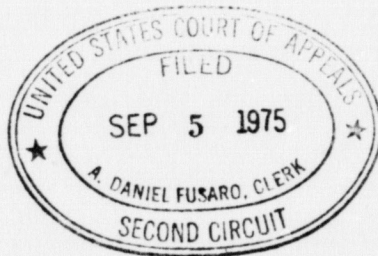
v.

POCONO INTERNATIONAL CORPORATION and
CHARLES GOLDBERG,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX



PRYOR, CASHMAN & SHERMAN
Attorneys for Appellants
410 Park Avenue
New York, New York 10022

PAUL J. CURRAN
United States Attorney
U. S. Court House
Foley Square
New York, New York 10007

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	Page
Docket Entries.....	A1
Indictment.....	A5
Charge of the Court.....	A34
Minutes of Sentence.....	A123
Judgment and Commitment Order Charles Goldberg.....	A147
Judgment and Commitment Order Pocono International Corporation.....	A149
GOVERNMENT'S EXHIBITS:	
4a--Letter Dated May 4, 1971.....	A151
4B--Letter Dated May 3, 1971.....	A152
4C--Letter Dated May 3, 1971.....	A153
8A--Statement of Record, Pages 11 and 12.....	A154
9A--Property Report, Page 3.....	A156
32A--Letter Dated May 4, 1971.....	A157
33--Letter Dated May 25, 1971.....	A158
34--Letter Dated June 25, 1971.....	A159
35--Letter Dated April 28, 1971.....	A160
36--Letter Dated May 12, 1971 and Engineer's Report.....	A163
37--Letter Dated May 26, 1971.....	A172
38--Letter Dated October 20, 1971.....	A173
60--Soils Test Report, May 1, 1971.....	A175

Index

	Page
DEFENDANTS EXHIBITS:	
B--Letter Dated January 31, 1973.....	A181
D--Letter Dated June 12, 1973.....	A182
N--Pennsylvania Sewage Facilities Act Manual Cover, Pages 109 and 110.....	A184
COURT'S EXHIBIT:	
3--Redacted Indictment.....	A187

DOCKET ENTRIES

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

JUDGE BRIEANT

73 CRIM. 630

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U.S.: 264-6409
vs.		
1) POCONO INTERNATIONAL CORPORATION		For Defendant:
2) CHARLES GOLDBERG		Elliot A. Taikeff 401 Bway, NYC 10013
		Graham Hughes NY Univ. School of Law 40 Wash. Sq. So., NYC 10012 Tel# 598-2565

05	STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
	J.S. 2 mailed	Clerk	5/28/73	Taikeff	5-	5-
	J.S. 3 mailed	Marshal	5/29/73	idm		
	Violation	Docket fee				
	Title 18					
	Sec. 1341 and 2 use of mail in a scheme and artifice to defraud (cts.1 thru 15), 15:1703(a)(1) and 1703(a)(2) and 1717 violation of Interstate Land Sales Act (cts.16 thru 17)					

DATE	PROCEEDINGS
6-27-73	Filed indictment
7-9-73	Deft. (Atty. Present) Goldberg pleads not guilty. Pocono International Corp. pleads not guilty through Charles Goldberg, Pres. of Corporation. Deft. and Corp. E.O.P. and colored photographs and fingerprints. Case assigned to Judge Briant. -- Steiner, J.
7-10-73	Pocono- Filed notice of appearance fr by atty Bernard Novick 350-5th ave 10001 PE 6-6230.
9-6-73	Filed Govt. notice of readiness for trial.
10-10-73	Filed transcript of record of proceedings dated Sept.25-73.
10-10-73	Filed deft. motion for B/P.
10-10-73	Filed MEMO & ORDER: All issues relating to the B/P were disposed of by directions made in open court on Sept.25-73, except for defts. demand for a list of Govt. witnesses. (cont'd on page 2)

A 2
Docket Entries

73 Crim.630

Page 2

BRIEANT, J.

DATE	PROCEEDINGS
	(Cont'd from page 1) *** Under the unusual circumstances of this case, the Govt. is directed to furnish the names of witnesses who will be called solely as experts, together with their addresses, and professional affiliations. In all other respects, the demand for a list of witnesses is denied. Defts. and Govt. should exchange reports of tests, ***. Such discovery should be made at the time and place convenient to counsel, but should be completed no later than Nov. 8, 73. So Ordered. BRIEANT, J. (n/a)
12-4-73	Filed transcript of record of proceedings dated 9-25-73.
5-21-74	Filed Deft. POCONO - memo concerning pre-trial.
5-21-74	POCONO - Filed deft. memo Re: counts.
5-21-74	Filed Govt's. memo of law.
6-1-74	Filed Deft's Memorandum concerning the statement of Record filed on July 18, 1972.
6-5-74	POCONO= Filed Govt's Memorandum and Order in reference to Deft's motion regarding large number of counts to the Jury. Deft's motion is DENIED without prejudice to renew during the trial. SO ORDERED -- BRIEANT, J.
6-3-74	Jury Trial begun as to both Deft's. (Atty present).
6-4-74	Trial cont'd. Cts. 22 and 24 charging violation in part of T.15, USC, Sec. 1703(a)(1) are stricken as to that part. Ct. 38- Defts are acquitted on this count only.
6-5-74	Trial cont'd.
6-6-74	Trial cont'd.
6-7-74	Trial cont'd.
6-10-74	Trial cont'd.
6-11-74	Trial cont'd.
6-12-74	Trial cont'd. Cts. 3,5,6,10,13,14,15,22,23,24,25,34,35,36,37,39,40,42=DISMISSED AS TO BOTH DEFT'S. Deft. GOLDBERG, only, Ct. 26 DISMISSED.
6-13-74	Trial cont'd. Cts. 1 & 17 DISMISSED.
6-14-74	Trial cont'd. JURY VERDICT = CHARLES GOLDBERG= GUILTY on CTS. 2,4,7,8,9,11,12,19,21,27,29,31,33,41,16,18,20, 26,30, and 32. POCONO INT'L CORP.=GUILTY ON CTS. 2,4,7,8,9,11,12,16,18,19,20,21,26,27,29,30,31,32, 33,41. Ct.28 DISMISSED as to this Deft. P.S.I. ordered. Sentence adj'd to Sept 10, 1974. Deft. GOLDBERG cont'd on Bail--BRIEANT
6-13-74	POCONO= Filed Deft's memo re: The Penn Sewage Facilities Act, etc. "" = filed Deft's memo re: Waiver prohibits misrepresentations about record & Proper "" = filed Deft's memo re: On Lot-Sales. "" = filed Deft's memo re: 24 C.F.R Section 1710.14 Interstate Offerings.
6-13-74	Filed Government's trial memorandum.

Docket Entries

3 CR 630

Page #3

73 CR 630 (CLB)

DATE	PROCEEDINGS
7-24-74	Filed Deft's Notice of Motion for an order entering a judgment of acquittal on Cts. 2,4,7,8,9,11,12,19,21,27,29,31,33, and 41 pursuant to Rule 29, F.R.Cr.P., etc.
7-24-74	Filed Deft's Memorandum of Law in Support of Post-Verdict Motions.
7-26-74	Filed transcript of record of proceedings, dated 6-4-74.
7-26-74	Filed transcript of record of proceedings, dated 6-14-74.
7-26-74	Filed transcript of record of proceedings, dated 6-13-74.
8-8-74	Filed Govt's Memorandum in opposition to Defts' Post-Verdict motions.
8-21-74 12-18-74	Filed Defts Reply Memorandum in Support of Post-Verdict Motions. Filed transcript of record of proceedings, dated Oct 23, 1974
12-30-74	Filed Pltff's MEMORANDUM AND ORDER in reference to Deft's Notice of Motion for an order entering a judgment of acquittal filed 7-24-74. The Motions are in all respects DENIED. SO ORDERED. BRIEANT, J. (n/mailed 12-31-74)
Jan 2 75	Filed transcript of record of proceedings, dated June 6, 1974
Jan 2 75	Filed transcript of record of proceedings, dated June 11, 1974
1-6-75 1-2-75	Filed Pltff's Memorandum of Law - Similar Acts. Filed transcript of record of proceedings, dated June 3, 1974
1-17-75	Filed Defts Affdvt and Notice of Motion for a judgment of acquittal on Counts 2,4,7,8,9,11,12,19,21,27,29,31,33, and 41, pursuant to Rule 29, F.R.Cr.P., or, in the alternative, for a new Trial as to these same counts pursuant to Rule 33, F.R.Cr.p.
2-24-75	Filed Pltff's Memorandum in Opposition to Post-trial motion.
3-4-75	Filed Defts' afdvt. in response to Govt's Memo. in opposition to Post-Trial motion.
3-4-75	Filed Defts' Reply memo. in support of Post-Trial Motions.
3-10-75	Filed transcript of record of proceedings, dated Jan 17, 1975
4-25-75	Filed Pltff's affdvt in opposition of Deft's motion for a judgment of acquittal or a new trial.
4-25-75	Filed Deft's affdvt in reply to the January 27th affdvt of Anne S. Erisoff, Esq.
4-28-75	Filed Gov'ts Memorandum And Order #42319 Re. Defts Affdvt and Notice of Motion for a judgment of acquittal filed 1-17-75. Deft's motions are in all respects DENIED. --SO ORDERED-- BRIEANT, J. (m/n 4-28-75)
5-20-75	BOTH DEFT'S= Filed Affdvt and Sentencing Memorandum.

73 CR 630

Page #4

73 CR 630 (CLD)

DATE	PROCEEDINGS
5-19-75	<p>(#75,474)</p> <p>POCONO INTERNATIONAL CORP.= Filed Judgment And Commitment ORDER= Deft is FINED \$1,000, on CT.2 - \$5,000, on CTS. 18 & 19 non cumulative to each other but cumulative to remaining CTS. - \$1,000, on CT.7 - \$5,000, on CTS. 26 & 27 non cumulative to each other but cumulative to the prior cts - \$1,000, on CT.8 - \$5,000, on CT.41 non cumulative to each other but cumulative to the prior cts. - \$1,000, on CT.4 - \$5,000, on CTS. 20 & 21 non cumulative to each other but cumulative to the prior cts. - \$1,000, on CT. 9 - \$5,000, on CT.29 non cumulative to each other but cumulative to prior cts. \$1,000, on CT. 11 - \$5,000, on CTS. 30 & 31 non cumulative to each other but cumulative to prior cts. - \$1,000, on Ct.12 - \$5,000, on CTS. 32 & 33 non cumulative to each other but cumulative to the prior cts. - \$2,500, on CT. 16, cumulative. TOTAL CUMULATIVE of \$37,500.00 is to be PAID within 45 DAYS -----BRIEANT,J.</p>
5-19-75	<p>CHARLES GOLDBERG= Filed Judgment And Probation/Commitment Order= Deft is hereby committed to the custody of the Atty General for imprisonment for a period of EIGHTEEN (18) MONTHS on each of COUNTS 16,18,20,26,30, and 32, to run concurrently with each other. Imposition of sentence on COUNTS 2,4,7,8,9,11,12,19,21,27,29,31,33, and 41 is suspended. Deft. is placed on Probation for a period of FOUR (4) YEARS, to commence upon expiration of confinement, subject to the standing probation order of this Court. Special condition of Probation being that the Deft. use his best efforts to cause the co-Deft. to pay the Fines and Deft. shall not engage directly or indirectly in sale of land in interstate commerce nor as a fiduciary or corporate officer or direct, without permission of Probation Officer first obtained. Deft. continued on own recognizance pending appeal.---BRIEANT.</p>
5-28-75	<p>BOTH DEFT'S= Filed Notice of Appeal to the U.S.C.A. for the 2nd Circuit from the final judgment of conviction entered in this action on the 19th day of May, 1975. (m/ n to Deft's & U.S. Atty's office -5-29-75.)</p>
6-3-75	<p>Filed transcript of record of proceedings, dated Feb 7, 1975</p>
6-20-75	<p>Filed letter dated Sept 27-74, from Elliot A. Taikeff to Judge Briant.</p>
6-24-75	<p>Filed Notice to Docket Clerk that the record has been transmitted & certified to USCA on 6-24-75.</p>
7-21-75	<p>Filed Govt's Requests to Charge.</p>
7-18-75	<p>Filed transcript of record of proceedings, dated June 8-75</p> <p>Filed transcript of record of proceedings, dated May 19-75</p>
7-22-75	<p>BOTH DEFT'S= Filed Notice to the Docket Clerk that the supplemental record on appeal has been certified and transmitted to the U.S.C.A. for the 2nd circuit on 7-22-75.</p>

A 5
INDICTMENT

JUDGE BRIEANT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

- v -

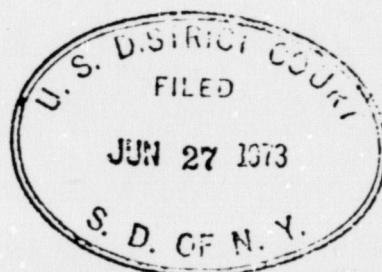
POCONO INTERNATIONAL CORPORATION;
CHARLES GOLDBERG,

Defendants.
-----X

73 CRIM. 630

INDICTMENT

73 Cr.



The Grand Jury Charges:

INTRODUCTION

1. That at all times relevant, POCONO INTERNATIONAL CORPORATION was and is a Corporation organized under the laws of the Commonwealth of Pennsylvania for the purpose, amongst others, of developing certain tracts of rural land situated in the State of Pennsylvania in an area commonly known as the Pocono Mountains, and particularly for the development of an area known as Hickory Run Forest situated in Carbon County, Penn Forest Township.

2. CHARLES GOLDBERG, at all times relevant, was and is the principal stockholder, Director and Officer of POCONO INTERNATIONAL CORPORATION, and has directed the activities of that Corporation since its incorporation in September, 1969.

3. The subdivision known as Hickory Run Forest consists of approximately 820 acres, divided into 8 numbered Sections and further subdivided into 966 lots. Prior to its acquisition, subdivision and subsequent sale by POCONO INTERNATIONAL CORPORATION, the acreage which now forms Hickory Run Forest was a mostly wooded,

A 6
Indictment

gently rolling vacant and rural countryside, bordered by Hickory Run State Park and other public lands used for municipal watersheds.

4. Adequate provision for sanitary disposal of household waste and sewage is essential for the development of rural lands into a subdivision containing numerous building lots. Household waste and sewage can be disposed of through the construction and use of a central collection and treatment system by the developer, or by the construction of on-site subsurface treatment devices such as a septic tank system. The use of conventional septic tank systems to dispose of human and household waste and sewage is not suitable for most of the building lots in Hickory Run Forest because of the seasonal high-water table and slow permeability, shallowness and stoniness of soil conditions.

5. Non-conventional on-site sub-surface systems for disposal of human and household waste and sewage, such as aeration tanks and sand filter beds, will not function properly where there is a high seasonal water table and are of such an experimental nature that officials of the various Townships of the Commonwealth of Pennsylvania have no authority to approve their use by property owners.

6. Sellamerica, Ltd., at all times relevant, was and is a Corporation organized under the laws of the State of New Jersey in 1971 with principle offices in Englewood, New Jersey, and New York City, New York. Sellamerica was organized for the

A 7
Indictment

purpose, amongst others, of selling lots situated in Hickory Run Forest to the residents of the Metropolitan New York City area, including those residents situated in the Southern District of New York. Heinz Ebenstein, also known as Rick Ebenstein, or Ric Of The Poconos, was at all times relevant the principal stockholder, Director and President of Sellamerica, Ltd., and from November 4, 1971 has been the Vice President of POCONO INTERNATIONAL CORPORATION. The aforesaid CHARLES GOLDBERG, at all times relevant, has been the Vice President of Sellamerica, Ltd.

7. Sellamerica, Ltd., and Ebenstein, as the agents of POCONO INTERNATIONAL CORPORATION, employed numerous salesmen and telephone solicitors and placed advertisements in newspapers and on radio and television, which were designed to promote and further the sale of building lots in Hickory Run Forest through the use of the aforesaid means of interstate commerce.

COUNTS ONE THROUGH FIFTEEN

8. Each and every allegation of paragraphs 1 through 8 of the INTRODUCTION is hereby repeated, realleged and incorporated by reference in each of Counts 1 through 15 of this indictment, as though fully set forth therein.

9. That from on or about January 1, 1971 and continuing up until the date of this indictment, defendants CHARLES GOLDBERG and POCONO INTERNATIONAL CORPORATION, devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations

A 8
Indictment

and promises from numerous persons residing within the Southern District of New York and such other persons who could be and would be induced by the defendants CHARLES GOLDBERG and POCONO INTERNATIONAL CORPORATION to purchase and agree to purchase real property situated in a subdivision known as Hickory Run Forest from POCONO INTERNATIONAL CORPORATION, well knowing at the time that the said pretenses, representations and promises, which are specifically described in paragraph "12" hereinafter, would be and were false when made and which scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, so devised and intended to be devised by the said defendant POCONO INTERNATIONAL CORPORATION and CHARLES GOLDBERG, was in substance as follows:

10. It was a further part of said scheme for Sellamerica, Ltd. and Heinz Ebenstein to be the agents of POCONO INTERNATIONAL CORPORATION for the purposes of promoting and selling lots in Hickory Run Forest to residents of New York City Metropolitan area.

11. It was a further part of the scheme that the defendants through their agents, would and did offer for sale, sell and cause to be sold lots and parcels of real property in a subdivision located in Carbon County, Pennsylvania, commonly known as Hickory Run Forest.

12. It was a further part of the scheme that the defendants, and their agents, would and did make the following false and fraudulent pretense, representations and promise that purchasers of lots in the Hickory Run Forest

A 9
Indictment

development would be able to dispose of human and household sewage and waste by constructing on-site septic tank systems which would be approved by the Township of Penn Forest.

13. It was a further part of the scheme that on or about the dates hereinafter set forth, in Carbon County and elsewhere in the State of Pennsylvania, the defendants, POCONO INTERNATIONAL CORPORATION and CHARLES GOLDBERG, unlawfully, wilfully and knowingly and for the purpose of executing said scheme and artifice and attempting to do so did place, or cause to be placed, in authorized depositories for mail, certain matter and did cause to be delivered by mail according to the directions thereon, matter addressed as hereinafter set forth, to be delivered by the United States Postal Service and United States Post Office:

<u>Count</u>	<u>On or About</u>	<u>Sender</u>	<u>Addressee</u>
1	July 18, 1972	Charles Goldberg	John & Frances Jordan
2	August 16, 1972	Charles Goldberg	Sigfried & Nitsa DelGado
3	August 22, 1972	Charles Goldberg	Frank & Sonja DiDomenico
4	August 22, 1972	Pocono International Corporation	Stephen & Joan Arella
5	October 30, 1972	National Abstract Company	Serafin & Carmen Rosa
6	October 30, 1972	Pocono International Corporation	Angelina & Philip Arias
7	October 31, 1972	Charles Goldberg	Salvatore & Maria DiMeglio
8	November 7, 1972	National Abstract Company or other agent of Pocono International Corporation	Alexius & Elizabeth Bach

<u>Count</u>	<u>On or About</u>	<u>Sender</u>	<u>Addressee</u>
9	February 15, 1973	National Abstract Company	Zvi Hava
10	February 15, 1973	National Abstract Company	Luis & Elsie Rivera
11	February 26, 1973	National Abstract Company	Francis Cancro
12	February 26, 1973	National Abstract Company	Attilio Perri

14. It was further part of the scheme that on or about the dates hereinafter set forth, in the Southern District of New York the defendants, POCONO INTERNATIONAL CORPORATION and CHARLES GOLDBERG, unlawfully, wilfully and knowingly, and for the purpose of executing said scheme and artifice and attempting to do so, did cause to be placed in authorized depositories for mail, certain matter and did cause to be delivered by mail according to the direction thereon, matter addressed as hereinafter set forth to be delivered by the United States Postal Service and United States Post Office:

<u>Count</u>	<u>On or About</u>	<u>Sender</u>	<u>Addressee</u>
13	August 1, 1972	Frankand Frances DeMara	New Jersey Bank (National Association)
14	September 1, 1972	Louis and Rose Proco	New Jersey Bank (National Association)
15	November 1, 1972	Louis and Ida Hernandez	New Jersey Bank (National Association)

(Title 18, United States Code, Section 1341).

A 11
Indictment

COUNT 16

The Grand Jury further charges:

15. On or about the 18th day of July, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 25, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a printed Property Report meeting the requirements of 15 U.S.C. §1707 furnished to the purchasers, John and Frances Jordan, in advance of signing a contract and agreement for deed of sale between said purchasers and the seller, POCONO INTERNATIONAL CORP; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 17

The Grand Jury further charges:

16. On or about the 18th day of July, 1972, and continuing up until the date of this indictment, the defen-

dants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 25, Sections 1 - 4, Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchasers, John and Frances Jordan, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 18

The Grand Jury further charges:

17. On or about the 16th day of August, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C.

§1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer, and cause to be sold to Sigfried and Nitsa DelGado a Lot described as Lot 137B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 19

The Grand Jury further charges:

18. On or about the 16th day of August, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 137B, Sections 1 - 4, in Hickory Run Forest, a subdivision

as defined in 15 U.S.C. §1701(3), and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said lot and the said subdivision, and upon which the purchasers, Sigfried and Nitsa DelGado, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 20

The Grand Jury further charges:

19. On or about the 22nd day of August, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 129B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1703(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704,

Indictment

§1705 and §1706 of Title 15 of the United States Code; nor was a printed Property Report meeting the requirements of 15 U.S.C. §1707 furnished to the purchasers, Stephen and Joan Arella, in advance of signing a contract and agreement for deed of sale between said purchasers and the seller, POCONO INTERNATIONAL CORP; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 21

The Grand Jury further charges:

20. On or about the 22nd day of August, 1972, and continuing up until the date of this indictment, the defendants, both whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 129B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchasers, Stephen and Joan Arella, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser;

all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 22

The Grand Jury further charges:

21. On or about the 30th day of October, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails; to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 148B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a printed Property Report meeting the requirements of 15 U.S.C. §1707 furnished to the purchasers, Serafin and Carmen Rosa, in advance of signing a contract and agreement for deed of sale between said purchasers and the seller, POCONO INTERNATIONAL CORP; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 23

The Grand Jury further charges:

22. On or about the 30th day of October, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 148B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchasers, Serafin and Carmen Rosa, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 24

The Grand Jury further charges:

23. On or about the 30th day of October, 1972, and

continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 110B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a printed Property Report meeting the requirements of 15 U.S.C. §1707 furnished to the purchasers, Angelina and Philip Arias, in advance of signing a contract and agreement for deed of sale between said purchasers and the seller, POCONO INTERNATIONAL CORP; all in violation of Title 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 25

The Grand Jury further charges:

24. On or about the 30th day of October, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make

use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 110B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchasers, Philip and Angelina Arias, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 26

The Grand Jury further charges:

25. On or about the 31st day of October, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New

York, to sell, offer and cause to be sold a Lot described as Lot 168, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a printed Property Report meeting the requirements of 15 U.S.C. §1707 furnished to the purchasers, Salvatore and Maria DiMeglio, in advance of signing a contract and agreement for deed of sale between said purchasers and the seller, POCONO INTERNATIONAL CORP; all in violation of Title 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 27

The Grand Jury further charges:

26. On or about the 31st day of October, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 168, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud and did obtain money and property by

means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchasers, Salvatore and Maria DiMeglio, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 28

The Grand Jury further charges:

27. On or about the 15th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 135B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a printed Property Report meeting the requirements of 15 U.S.C.

§1707 furnished to the purchaser, Zvi Hava, in advance of signing a contract and agreement for deed of sale between said purchaser and the seller, POCONO INTERNATIONAL CORP; all in violation of Title 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 29

The Grand Jury further charges:

28. On or about the 15th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 135B Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and arti-fice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchaser, Zvi Hava, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 30

The Grand Jury further charges:

29. On or about the 26th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold to Francis P. L. Cancro a Lot described as Lot 260B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code, all in violation of Title 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 31

The Grand Jury further charges:

30. On or about the 26th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communi-

cation in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 260B, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchaser, Francis P.L. Cancro, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs I through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 32

The Grand Jury further charges:

31. On or about the 26th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold to Attilio

A. Perri a lot described as Lot 261B, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no statement of record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; all in violation of Title 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 33

The Grand Jury further charges:

32 On or about the 26th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4), did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York to sell, offer and cause to be sold a Lot described as Lot 261B, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchaser, Attilio A. Perri, relied, and did engage in a transaction, practice and course of business which operated and would operate as fraud and deceit upon a purchaser; all as more fully and specifically

set forth in paragraphs I through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 34

33. On or about the 1st day of August, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a check was caused to be mailed from the State of New York to the State of New Jersey, in part payment for the purchase by Frank and Frances De Mara of a Lot described as Lot 28B, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 35

34. On or about the 1st day of August, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did,

within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a check was caused to be mailed from the State of New York to the State of New Jersey, in part payment for the purchase of a Lot described as Lot 28B, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision and upon which the purchasers, Frank and Frances deMara, relied, and did engage in a transaction practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs I through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 36

35. On or about the 1st day of September, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a check was caused to be mailed from the State of New York to the State of New Jersey, in part payment for the purchase of a Lot

described as Lot 222B, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a printed Property Report meeting the requirements of 15 U.S.C. §1707 furnished to the purchasers, Louis and Rose Porco, in the advance of signing a contract and agreement for deed of sale between said purchasers and the seller, POCONO INTERNATIONAL CORP.; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 37

36. On or about the 1st day of September, 1972 and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a check was caused to be mailed from the State of New York to the State of New Jersey, in part payment for the purchase of a Lot described as Lot 222B, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), and did employ a device, scheme and artifice to defraud and did obtain money and property by means of material

A 29
Indictment

misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchasers, Louis and Rose Porco, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs I through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 38

37. On or about the 1st day of November, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a check was caused to be mailed from the State of New York to the State of New Jersey, in part payment for the purchase by Louis and Ida Hernandez of a Lot described as Lot 133B, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 39

38. On or about the 1st day of November 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a check was caused to be mailed from the State of New York to the State of New Jersey, in part payment for the purchase of a Lot described as Lot 133B, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchasers, Louis and Ida Hernandez, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 40

39. On or about the 22nd day of August, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned

A 31
Indictment

herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 440, Sections 5 and 6, of Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision and upon which the purchasers, Frank and Sonja DiDomenico, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs I through 14 of this indictment and here realleged; all in violation of Title 18 U.S.C. §2: Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 41

40. On or about the 7th day of November, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails,

to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 317, Sections 5 and 6, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchasers, Alexius and Elizabeth Bach, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs I through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 42

41. On or about the 21st day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 483, Sections 5 and 6, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ

a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchasers, Louis and Elsie Rivera, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs I through 14 of this Indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

Dorothy Beckman (Foreman)
FOREMAN

Paul J. Curran
PAUL J. CURRAN
United States Attorney

1 mbrf 3 pm

2 CHARGE OF THE COURT

3 (In open court, jury not present.)

4 THE COURT: Following our prior discussions which
5 we have been having I understand there is a redacted
6 indictment here and I think it ought to be marked as
7 Court's Exhibit 2, and I'd like to inquire whether the
8 Court is correct in understanding that when the jury is
9 sent out to begin deliberating, the forelady may be given
10 that, and that's satisfactory as to form. That's the
11 theory I have been proceeding on but I don't think it has
12 been stated on the record.

13 MR. TAIKEFF: That theory is now an accepted fact,
14 your Honor.

15 THE COURT: All right.

16 MR. SCHWARTZ: That's satisfactory to the
17 Government.

18 THE COURT: There is no necessity of them asking
19 for it. I just give it to her.

20 MR. SCHWARTZ: Just one thing you said, Court's
21 Exhibit 2. I think there may have been a note marked
22 Court's Exhibit 2.

23 THE COURT: All right, the clerk will mark
24 it with the right number.

25 I thought we had only marked one.

(Court's Exhibits 2 and 3 marked.)

1 mbrf 2

1246

2 MR. SCHWARTZ: I believe Court's Exhibit 2
3 was a request to charge handed to the Court.

4 THE COURT: Well, I have in mind to cover that topic.
5 Whether I will use precisely those words or not, I am some-
6 what doubtful.

7 MR. TAIKEFF: Your Honor said it was his practice
8 to allow counsel to object in advance and I'd like to
9 object and strenuously, if I can, your Honor.

10 THE COURT: I think your position is already pre-
11 served on that question, Mr. Taikeff, but you can have an
12 exception.

13 MR. TAIKEFF: Thank you, your Honor.

14 THE COURT: I propose to tell them that -- to
15 read them these regulations and to tell them that if they
16 find that a particular lot is so situated as to require
17 the type of sand bed filter which is not subsurface,
18 in order to comply with 73.11E, that would be a non-
19 conventional facility as to which the township would not have
20 the right to issue a permit either in 1971 or at any time.

21 MR. TAIKEFF: Is your Honor going to read to them
22 the regulation upon which your Honor's legal conclusion is
23 based?

24 THE COURT: Yes. I think to paraphrase the
25 regulation would be unwise particularly in view of the

1 mbrf 3

1247

2 convoluted testimony we had from at least one of the
3 experts. All right, bring in the jury.

4 (4:00 p.m., jury enters courtroom, and is
5 charged.)

6 THE COURT: Mrs. Cutler, forelady of the jury,
7 and members of the jury.

8 We are now at that stage in the trial where you
9 will soon undertake your final function as jurors.

10 In this case, and here you perform one of the
11 most sacred obligations of citizenship, and that is acting
12 as ministers of justice. You are to discharge this final
13 duty in an attitude of complete fairness and impartiality,
14 and as was emphasized by me when you were first selected,
15 without bias or prejudice for or against the Government or
16 either defendant as parties to this controversy.

17 Let me state the fact that the Government as
18 a party entitles it to no greater consideration than that
19 accorded to any other party to a litigation.

20 By the same token, it is entitled to no less
21 consideration. All parties, individuals, corporations,
22 and the Government, alike, stand as equals before the
23 bar of justice in this court.

24 Your final role here is to decide and
25 pass upon the fact issues in this case. You are the sole

mbrf 4

1248

1 and exclusive judges of the fact. You determine the
2 weight of the evidence. You appraise the credibility or
3 truthfulness of the witnesses. You draw the reasonable
4 inferences or conclusions from the evidence, and you resolve
5 such conflict as there may be in the evidence.
6

7 I shall later tell you how you determine the
8 credibility of witnesses.

9 My final function is to instruct you as to the
10 law, and it is your duty to accept these instructions
11 as to the law and to apply them to the facts as you may
12 find them.

13 You are not to consider any one instruction which
14 I give you alone as stating the law, but you must consider
15 all of my instructions taken together as a whole.

16 With respect to any fact matter in evidence,
17 it is your recollection and yours alone that governs.
18 Anything that the lawyers, either for the Government or the
19 defendants may have said with respect to matters in evidence
20 whether during the trial, in a question, in argument
21 or summations, is not to be substituted for your own recollec-
22 tion of the evidence.

23 And so too, anything that I might say during the
24 trial, or anything that I might refer to during the course
25 of giving these instructions as to any matter in

1 mbrf 5

1249

2 evidence is not to be taken in place of your own
3 recollection.

4 Now the attorneys, not only have their right but
5 it is their duty to make objections and to press whatever
6 legal theories they may have. They are simply
7 performing their duty in the case. Any evidence as to
8 which an objection was sustained by the Court, and any
9 answer ordered stricken out by the Court must be disregarded
10 in its entirety. Put out of your mind any exchanges which
11 may have occurred during the trial between the lawyers or be-
12 tween any attorney and the court. It's not my function to
13 favor one side or the other or to criticize anybody in any
14 way whatsoever or to indicate to you the jury in any way
15 that I have any opinion as to the credibility of any wit-
16 ness, or as to the guilt or innocence of a defendant.
17 That is your function, it is yours alone, and I leave it
18 entirely with you.

19 So please don't assume that you hold any opinion
20 in any matters concerning this case, and please don't reach
21 any conclusion that I may have some attitude or that
22 I may tend to favor one side or the other in the case. I do
23 not.

24 Of course the indictment here itself is no
25 evidence of the crimes charged. Instead, an indictment

A 39
Charge of the Court

1 mbrf 6

1250

2 is merely the method or procedure under the law whereby
3 persons accused of crimes by a grand jury are brought
4 into court to have their guilt or innocence determined by
5 a trial jury such as yourselves.

6 Therefore, the indictment must be given no eviden-
7 tiary value but shall be treated by you only as an accusa-
8 tion. It's not evidence or proof of a defendant's
9 guilt, and no weight or significance whatsoever is to be
10 given to the fact that an indictment has been returned
11 against either defendant.

12 They have each pleaded not guilty, and thus
13 the Government has the burden of proving the charges
14 to your satisfaction beyond a reasonable doubt.

15 Neither defendant has to prove innocence. On
16 the contrary, each is presumed to be innocent of the
17 accusations contained in the indictment. This presumption
18 of innocence was in the defendant's favor at the start of
19 the trial, as I believe I told you when the jury was selected.
20 It continued in their favor throughout the entire trial,
21 and it is in their favor now and remains in their favor
22 during the course of your deliberations in the jury room;
23 and the presumption of innocence is removed only if and
24 when you, the jury, are satisfied that the Government
25 has sustained its burden of proving the guilt of a

1 mbrf 7
2 defendant beyond a reasonable doubt as to a particular
3 count or counts of the indictment.

4 Of course, unless you are so convinced you must
5 find the defendant you are considering not guilty as to such
6 count or counts.

7 Now the question naturally comes up what is a
8 reasonable doubt? Well, members of the jury, those words
9 almost define themselves. That is a doubt founded upon
10 reason. That is a doubt founded on reason arising out of the
11 evidence in the case or the lack of evidence. It's that
12 kind of a doubt which a reasonable person has after care-
13 fully weighing all the evidence.

14 Reasonable doubt is a doubt that appeals to your
15 reason, to your judgment, to your common sense, and your
16 experience. It is not caprice or whim or speculation,
17 or conjecture, or suspicion. It's not an excuse to
18 avoid the performance of an unpleasant duty, and it is not
19 sympathy for a defendant.

20 If after a fair and impartial consideration
21 of all the evidence you can candidly and honestly say you
22 are not satisfied of the guilt of a defendant as to any
23 particular count, that you do not have an abiding conviction
24 of a defendant's guilt of the particular charge, in sum,
25 if you have such a doubt as would cause you as prudent per-
sons to hesitate before acting in matters of importance

1 mbrf 8

1252

2 to yourselves, then you have a reasonable doubt and in that
3 circumstances, it is your duty to acquit.

4 On the other hand, if after an impartial
5 consideration of the evidence, you can candidly and honestly
6 say you do have an abiding conviction of the defendant's
7 guilt, such a conviction as you would be willing to act
8 upon in important and weighty matters of the personal
9 affairs of your own lives, then you have no reasonable doubt,
10 and under those circumstances, it is your duty to convict.

11 Reasonable doubt does not mean a possible
12 certainty, or beyond all possible doubt. If that were the
13 rule, few men however guilty they might be would ever
14 be convicted, because it is practically impossible for
15 a person to be absolutely convinced of any controverted
16 fact which by its nature is not susceptible of mathematical
17 certainty.

18 And for that reason the law in a criminal case
19 is that it is sufficient if the guilt of a defendant is
20 established beyond a reasonable doubt, not beyond all
21 possible doubt.

22 Now, the indictment in this case, which has been
23 marked Court's Exhibit 3 for identification, which will
24 be given to you before you commence your deliberations
25 here, contains 21 counts, and each count is a separate

mbrf 9

1253

1
2 crime, and they must each be considered spearately and
3 you will be asked to give a separate verdict as to
4 each count and a separate verdict as to each defendant
5 in those circumstances in which a count names both
6 defendants.

7 The indictment names two defendants in all,
8 although both are not named in each count, and I will come
9 to that as we proceed and you will see that when you examine
10 the indictment, but where the indictment contains
11 reference to both defendants in a single count, each de-
12 fendant is entitled to a separate verdict based on the
13 proof or lack of proof as against him or it.

14 In the determination of innocence or guilt you
15 must bear in mind that guilt is personal. The guilt
16 or innocence of a defendant on trial before you must be
17 determined separately with respect to that defendant solely
18 on the evidence presented against that defendant or the
19 lack of evidence.

20 The case of a defendant stands or falls upon
21 the proof or the lack of proof of the charge against that
22 defendant and not against soembody else.

23 For your guidance in considering the evidence
24 you have heard, I must tell you there are two classes
25 of evidence recognized and admitted in courts of justice,

A 43
Charge of the Court

mbrf 10

1254

upon either of which the jurors may find an accused guilty of a crime. One is called direct evidence, and the other is called circumstantial evidence.

Direct evidence tends to show the fact in issue without any need for any other amplification although of course there is always the question as to whether or not it is to be believed.

Circumstantial evidence is evidence that tends to show facts from which the fact in issue may reasonably be inferred. It is evidence which tends to prove the fact in issue by proof of other facts which have a legitimate tendency to lead the mind to infer that the facts sought to be established are true.

There is a traditional example given of circumstantial evidence. Sometimes you can't tell by looking out the window whether it is raining or not outside; but if you see people passing by in the streets have their umbrellas up, you will usually come to the conclusion that it is raining. You have direct evidence, the evidence of your sense, that tells you that there are persons out there with umbrellas that are up; and that constitutes circumstantial evidence from which you are entitled to conclude that it must be raining.

In other words, circumstantial evidence consists

1 mbrf 11

1255

2 of facts proved from which the jury may infer by a process
3 of reasoning the facts in issue.

4 Circumstantial evidence, if believed, is of no
5 less value than direct evidence, for in either case, you
6 must be convinced beyond a reasonable doubt of the guilt
7 of the defendant.

8 Now, a word about credibility. In determining
9 what evidence you will accept you must make your own
10 evaluation of the testimony given by each of the witnesses,
11 and determine what you believe to be the truth and the
12 degree of weight you choose to give to that testimony.
13 The testimony of a witness may fail to conform to the
14 facts as they actually occurred; because the witness is
15 intentionally telling a falsehood, or because the witness
16 did not accurately see or hear what he testified about,
17 or because his recollection of the events is faulty,
18 or because he has not expressed himself clearly in giving
19 his testimony. There is no magic formula by which you can
20 evaluate testimony.

21 You bring into this courtroom today with you
22 all the experience and background of your own lives. In
23 your every day affairs each of you determine for yourselves
24 the reliability of statements made to you by others. The
25 same tests you use in your every day dealings are the

1 mbrf 12

1256

2 tests which you employ in this court and in the process
3 of your deliberations.

4 You may, of course, consider the interest or
5 lack of interest of any witness in the outcome of this case.
6 A witness who is interested in the outcome of a case is
7 not necessarily unworthy of belief. The interest of a
8 witness however is a factor or possible motive which you
9 may consider in determining the weight and credibility
10 to be given to his testimony.

11 In doing this you may also consider whether the
12 testimony of a witness is corroborated by the testimony of
13 the others, or by documentary evidence, or by exhibits.

14 You may also consider the bias or prejudice
15 of a witness if there be any, and the manner in which the
16 witness gives his testimony on the stand, the appearance
17 and conduct of the witness in giving his testimony, the
18 opportunity the witness had to observe the facts con-
19 cerning which he testifies, and the probability or im-
20 probability of the testimony in the light of all the other
21 events in the case.

22 You may also consider whether a witness had
23 any motive to lie. These are all items to be taken into
24 your consideration in determining the truthfulness and
25 weight if any which you will assign to that witness' testimony.

mbrf 13

1257

1
2 If such considerations make it appear likely
3 that there is a discrepancy in the evidence, you will have
4 to consider whether this can be reconciled by fitting the
5 two witnesses testimony together, and if that's not possible,
6 you will then have to determine which of the two con-
7 flicting versions you will accept.

8 Now, if you find that any witness has wilfully
9 testified falsely as to a material fact, you may but you need
10 not, disregard the entire testimony of that witness;
11 on the principle that one who testifies falsely about one
12 material fact may testify falsely about everything, but
13 you are not required to consider such a witness as
14 totally unworthy of belief. You may accept so much of
15 the testimony as you deem true, and disregard what you
16 believe is false.

17 You the jury, are sole judges of the facts, and
18 you determine which of the witnesses you will believe, what
19 portion of their testimony you will accept, and what
20 weight you will give to it.

21 Now, a word about the experts:

22 The general rule is that witnesses are permitted
23 to testify only as to facts, and may not express their
24 opinions. The exception to this rule is the opinion
25 of a qualified expert on some particular technical matter.

A 47
Charge of the Court

mbrf 14

1258

1 The expert may testify as to his opinion on a
2 subject concerning which he has special knowledge. This is
3 allowed on the theory that the advice of one experienced in
4 technical or special subjects such as soil uses and sewage
5 disposal techniques will aid the jury.
6

7 You may consider the expert's qualifications
8 and opinion, you may weigh his reasons if any, you may
9 consider on what facts or assumed facts he bases his testimony,
10 and after evaluating all of these matters, you may give
11 his testimony such weight as you feel it deserves,
12 just as any other witness in the case.

13 Expert opinion is purely advisory and you
14 may reject it entirely if in your judgment the reasons
15 given for it are not convincing or sound, or if you do not
16 believe that the witness is qualified, or if you think that
17 he has testified falsely. The determination rests entirely
18 with you in this case and not with the experts.

19 The first portion of the indictment
20 which I will read to you shortly, contains charges which
21 have been referred to for simplicity in discussion as mail
22 fraud charges.

23 That is just a short way of mentioning it. The use
24 of that title means nothing, and has no bearing on the
25 case. I am merely using that short expression to separate

mbrf 15

1259

1 the first group of charges from other charges which I will
2 come to in a moment. That part of the indictment alleges
3 in substance that Pocono International Corporation,
4 which I will sometimes refer to as simply Pocono, acting
5 through Charles Goldberg and acting through other employees
6 and agents, and Charles Goldberg individually were
7 knowingly involved in a scheme to defraud various purchasers
8 of land in the Hickory Run Forst development in the Pocono
9 Mountains in Pennsylvania.
10

11 In general, it is charged that that mail fraud
12 scheme consisted of two parts. In the first part of the
13 scheme, it is contended that the defendants knowingly
14 made false representations, that the building lots which
15 Pocono was selling were suitable for conventional septic
16 tank systems to treat sewage and household wastes when
17 in fact some of the land was not suitable for septic tanks
18 with conventional systems for the disposal of the
19 effluents, and would not be entitled to receive locally
20 issued permits from the town of Penn Forest.

21 Effluent of course is what comes out of the
22 tank after it has done its work in treating the sewage. It
23 is principally a fluid, it's mostly water, and you have
24 seen the diagram of course at this trial and you have
25 heard the experts describe to you what is comprised within

1 mbrf 16

1260

2 the concept of a conventional septic tank system and
3 I will not go into that in any greater detail at this
4 particular time.

5 Now it is claimed that the defendants falsely
6 stated that local township officials would issue permits
7 for such sewage disposal systems on the lots in this
8 Hickory Run Forest development.

9 The second part of the scheme as alleged in the
10 indictment was for the defendants to sell the unsuitable
11 lots to individual members of the public. The indictment
12 names eight people who did purchase land. Now apart from
13 any alleged fraudulent statements, and as a charge of a
14 separate crime, the indictment also charges that lots were
15 sold to seven purchasers before Pocono International Corpora-
16 tion and Charles Goldberg, the defendants, had completed
17 filing a statement of record with the Federal Department of
18 Housing and Urban Development as required by law.

19 Now, those have been referred to as the HUD charges,
20 so-called, and they have no connection with the alleged mail
21 fraud charges. These are claimed breaches of obligations
22 arising under the Interstate Land Sales Act which I
23 will come to in a moment.

24 Finally, there is a separate group of counts
25 in which it is alleged that the defendand corporation

1 mbrf 17

1261

2 but not Mr. Goldberg, knowingly failed to furnish
3 certain purchasers with a document called property report
4 which the defendant on such sale was required to furnish
5 to a purchaser under the circumstances which I will detail
6 in greater degree later on.

7 So we are dealing basically with three separate
8 types of charges.

9 When you get the indictment, you will see that some
10 parts or counts have been obliterated by black crayon or pen-
11 cil, and I believe I may have indicated to you before
12 that some parts of the indictment were dropped by the
13 Government and other parts have been dismissed by the Court.

14 You are not to speculate or consider or wonder
15 in any way about the reason for my actions in this regard.
16 It doesn't concern you in any way whatsoever, nor are
17 you to consider that because some of the counts were dropped
18 or dismissed, that that has any bearing on the guilt or
19 innocence of any defendant with respect to any other count
20 which was not dropped.

21 You must disregard absolutely any suggestion
22 whatsoever of illegal conduct on the part of these defendants
23 arising out of the counts which have been dropped or
24 dismissed, and you must restrict your deliberations and
25 your consideration of the evidence which is before you

1 mbrf 18

1262

2 solely to the question of whether or not the Government
3 has proved either or both of the defendants guilty of any
4 of the crimes charged in the remaining counts.

5 In this regard, and in all matters effecting
6 your service as jurors I am relying on your honesty and
7 sincerity and your impartiality as jurors in giving
8 you my directions that you will adhere to them.

9 I will now read to you the so-called mail fraud
10 statute. That is the statute which establishes the crime
11 charge in Counts 1, 2, 4, 7, 8, 9, 11 and 12 of the
12 indictment.

13 The statute reads in pertinent part as follows:

14 "Whoever, having devised or intending to devise
15 any scheme or artifice to defraud, or for obtaining money
16 or property by means of false or fraudulent pretenses,
17 representations or promises, for the purpose of executing
18 such scheme or artifice or attempting to do so places in
19 any post office or authorized depository for mail
20 matter any matter or thing whatever to be sent or delivered
21 by the Postal Service or takes or receives therefrom
22 any such matter or thing, or knowingly causes to be
23 delivered by mail according to the direction thereto, or
24 at the place at which it is directed to be delivered by
25 the person to whom it is addressed, any such matter or

1 mbrf 19

1263

2 thing, is guilty of a crime."

3 That is the so-called mail fraud statute.

4 Now the Interstate Land Sales Act, which is the
5 statutory basis for the balance of the charges in the
6 indictment, Title 15, United States Code Section 1703(A).

7 Those portions relevant to this case read as follows:

8 "A, It shall be unlawful for any developer or agent,
9 directly or indirectly, to make use of any means or instru-
10 ments of transportation or communication in interstate
11 commerce or of the mails:

12 "1, To sell or lease any lot in any subdivision
13 unless a statement of record with respect to such lot is
14 in effect and in accordance with Section 1706 of this
15 title and a printed property report meeting the requirements
16 of Section 1707 of this title is furnished to the purchaser
17 in advance of the signing of any contract or agreement for
18 sale or lease by the purchaser.

19 "2, In selling or leasing or offering to sell or
20 lease any lot in a subdivision, B, to obtain money or property
21 by means of a material misrepresentation with respect to
22 any information included in the statement of record or
23 the property report or with respect to any other information
24 pertinent to the lot or the subdivision and upon which the
25 purchaser relies."

1 mbrf 20

1264

2 Now, there is one other federal statute which
3 the jury must consider in the course of their deliberations,
4 and that is Title 18 Section 2 of the United States Code,
5 which is called the aider and abettor statute; and
6 as with all other statutes that I have read to you
7 I will explain the application of each to this case later
8 in my instructions.

9 Section 2 provides as follows:

10 "Whoever commits an offense against the United
11 States or aids, abetts, counsels, commands, induces, or pro-
12 cures its commission, is punishable as a principal.

13 "B. Whoever wilfully causes an action to be
14 done which if directly performed by him or another would
15 be an offense against the United States, is punishable
16 as a principal."

17 Each of the Counts 2, 4, 7, 8, 9, 11 and 12,
18 that is the so-called mail fraud counts, charges each
19 defendant with a separate violation of the mail fraud statute.
20 All of these counts refer to the one alleged fraudulent
21 scheme as it is set forth in the indictment, but under
22 the law applicable to this case, each use of the mails,
23 each letter sent for the purpose of executing that
24 scheme, constitutes a separate crime. Therefore these counts
25 are distinguishable from one another because each refers

1 mbrf 21

1265

2 to a separate use of the mails in execution or furtherance
3 of the fraudulent scheme and you must resolve the guilt
4 or innocence of each defendant separately on each of
5 these so-called mail fraud charges.

6 In order to find a defendant guilty of mail fraud
7 as charged in the counts I have mentioned, you must find that
8 the Government has proved as to the defendant who is
9 guilt or innocence you are considering, each of the
10 following three essential elements beyond a reasonable doubt --
11 these are the three elements of the crime of mail fraud.

12 One, that the defendant whose guilt or innocence
13 you are considering devised or intended to devise a scheme
14 or artifice to defraud or a scheme or artifice to obtain
15 money or property by means of false or fraudulent pretenses,
16 representations or promises, or aided and abretted another
17 in devising such a scheme.

18 Second, that the defendant acted wilfully and
19 knowingly and with an intent to deceive; and third, that
20 for the purpose of executing the scheme, the defendant
21 caused or caused another person to use the United States
22 mails or that he used or caused another to use the United
23 States mails.

24 The first element of the mail fraud offenses
25 which I just mentioned is the existence of a scheme

1 mbrf 22

1266

2 or artifice to defraud; or the existence of a scheme or
3 artifice to obtain money or property by means of false or
4 fraudulent promises, representations, or pretenses.

5 As used in this case, the words scheme and artifice merely
6 mean a plan for the accomplishment of an object.

7 The Government claims that the plan of the
8 defendants include sale of land to the public, sale of lots
9 to the public, not suitable for the installation of conven-
10 tional septic tank systems which would be approved by the
11 local township officials for the disposal of human and house-
12 hold sewage.

13 The Government can be found to have satisfied
14 its burden of proof as to this element if you find beyond
15 a reasonable doubt that there existed either one of two
16 types of scheme:

17 One, a scheme, that is a plan to defraud, or
18 two, a scheme, a plan to obtain money by false pretenses or
19 representations.

20 The first of these types of schemes, that is a
21 scheme to defraud, would include any plan to obtain something
22 of value by trick or deceit. This is so because the word
23 fraud as used here refers to all types of means which are
24 resorted to by an individual or corporation to gain
25 an advantage over someone else by false representations

1 mbrf 23

1267

2 or by suppression of the truth.

3 The second of those types of schemes, that is,
4 a scheme to obtain money by false representations,
5 is very similar to a scheme to defraud. Such a scheme
6 refers to any plan by which a person or corporation
7 seeks to obtain money from another by means of misrepre-
8 sentations as to a material fact.

9 Such misrepresentations may be made in two ways,
10 by statements of material facts which are just not true, and
11 second, by the failure to state facts which are necessary
12 to be stated in order to permit a full understanding of
13 the truth of the matters which have been stated.

14 In other words, once a person undertakes to
15 state certain facts to another person, he has an obligation
16 not to give a distorted picture of the facts which
17 renders his statement misleading.

18 Sometimes a half truth is more dishonest than
19 an out right falsehood, and therefore, a scheme to make
20 false misrepresentations may be constituted by half truths
21 which are calculated to mislead.

22 Of course, before you can find that there
23 existed a scheme to obtain money by false representations,
24 you must find that the facts allegedly misrepresented, whether
25 by affirmative false statements or by the failure to state

1 mbrf 24

1268

2 other relevant facts, were material to the matter under
3 consideration.

4 Material facts are facts which reasonably could
5 be expected to induce a person to decide whether to
6 act or not to act.

7 In other words, you must decide whether the
8 availability of on-lot conventional septic tank systems for
9 sewage treatment, which would be entitled to local township
10 approval, was material insofar as concerns a person who
11 is concerned whether or not to purchase a lot from Hickory
12 Run Forest.

13 I also instruct you that, consistent with my
14 definition of the term misrepresentation, it is sufficient
15 if the Government has proven the making of misrepresentations
16 whether implicitly or expressly.

17 In deciding whether the Government has satisfied
18 its burden of proving this first element of the mail fraud
19 offenses, that is, that there existed a scheme to defraud
20 or a scheme to obtain money by false representations, you
21 must decide whether the Government has proven the
22 particular scheme charged in the indictment. The scheme
23 charged is said to have consisted of various parts; primarily
24 it is claimed the scheme consisted of the defendants'
25 alleged plan to sell lots to the public without disclosing

1 mbrf 25

2 that major portions of the land were unsuitable for
3 conventional on-lot septic tank systems to treat human and
4 household waste. As part of the scheme it is alleged
5 that the defendants instead knowingly misrepresented that
6 the land was suitable for conventional septic tank
7 systems which would be approved by the local township author-
8 ities.

9 In this regard, I will read to you from Exhibit
10 63-A for identification, which is the rules and regulations
11 of the Department of Environmental Resources of the
12 Commonwealth of Pennsylvania as it was in effect in 1971;
13 August 2nd; and at all other material times referred to in
14 this trial. These rules and regulations have the effect
15 of law. They constitute in effect statutes of the State
16 of Pennsylvania.

17 Section 73.11, subchapter B, entitled
18 "Individual Sewage Disposal Facilities, General, Overall
19 Requirements," provides, "That the maximum
20 elevation of the ground water table shall be at least four
21 feet below the bottom of the excavation of the leaching
22 area. Rock formations and impervious strata shall be at a
23 depth greater than four feet below the bottom of the
24 excavation."

25 In connection therewith, I also will read to

1 mbrf 26

1270

2 you out of the same regulations, Section 73.61 entitled
3 "General," and that section therein provides that,
4 "Proposed alternate methods other than a subsurface disposal
5 system shall not be used unless approved by the Department
6 of Environmental Resources."

7 Accordingly, I charge you that as a matter of
8 law, in August 1971 and thereafter, a sandbed filter system
9 above the ground or so-called turkey mound, as it has been
10 referred to in this case, is not a conventional sewage disposal
11 system of the sort which could be approved, and licensed, or
12 for which a permit could be issued by the local township
13 authorities, but rather the authority to grant such approval
14 was at all times vested in the Department of Environmental
15 Resources, a branch of the state government.

16 If you find that the defendants or either of
17 them knew that some or any substantial number of the lots
18 in the proposed subdivision were subject to such physical
19 conditions that a conventional septic tank system of the
20 sort which would have subsurface facilities other than turkey
21 mound, and which could be approved by the local township authori-
22 ties, could not be used, existed in this subdivision, in other
23 words, if you find that there were a substantial
24 number of such lots which could not obtain local township
25

mbrf 27

1271

permits for conventional subsurface septic tank disposal systems, then you may find that any representation to the contrary was a misrepresentation and false; and if you find that any defendant knowingly misrepresented, as aforementioned, then you may find that those elements of the crime of mail fraud have been satisfied.

If you find that a defendant participated in the scheme to defraud, either as a person who devised the scheme or as an aider and abettor, you must next consider whether the Government has proven beyond a reasonable doubt that that defendant acted knowingly and wilfully.

I direct your attention to these words knowingly and wilfully. The question is what do those words mean. Well, first they do not mean that the Government has to show that a defendant knew he was breaking a particular law before he can be convicted of a crime. They also do not mean that the Government has to show that a defendant intended to profit at the expense of any other person; nor do they have anything to do with the defendants' personal or private reasons for violating a statute, for if after considering all the evidence in accordance with my instructions you come to the conclusion that the defendant whose guilt or innocence you are considering violated the statutes, in that event a defendant's personal or private

1 mbrf 28

1272

2 reasons for doing so are of no consequence as far as guilt
3 is concerned.

4 An act is done knowingly if it is done voluntarily
5 and purposely and not because of mistake, accident, mere
6 negligence or other innocent reason.

7 The words, "knowingly and wilfully" are opposed to
8 the idea of an inadvertent or accidental misstatement,
9 and if either defendant by innocent mistake, made an
10 erroneous or incorrect statement or representation, then
11 there is no crime. In the context of this case, and this
12 will apply to each of the counts in this indictment, there
13 is no criminal conduct unless that conduct is conduct
14 which is done knowingly and wilfully within the definition
15 I am presently giving to you.

16 An act is wilfull if it is done knowingly
17 and deliberately and with an evil motive or purpose.
18 "Unlawfully" means contrary to law. Hence to do an act
19 unlawfully means to do something which is contrary to law.
20 In essence then the phrase "knowingly,wilfully and
21 unlawfully," means in a voluntary or deliberate fashion.

22 I will come back to this question of knowingly
23 and wilfully because it pertains throughout the case.

24 Essential to the second element of the crime of
25 mail fraud, in addition to proof that the defendant acted

1 mbrf 29

2 knowingly and wilfully is proof that he or the act had
3 with intent to deceive. Thus if you find that a defendant
4 acted in good faith and in the honest belief that the
5 various representations made or which he assisted others
6 in making were true, and didn't intend to defraud anyone,
7 then this would be a complete defense to the charge made
8 here.

9 In considering that a defendant acted in good faith
10 you are instructed that a defendant's belief, if such
11 belief existed, that the situation would resolve itself so
12 that no one would lose any money, does not require
13 a finding by you that he acted in good faith. No
14 amount of honest belief on the part of a defendant that his
15 scheme would succeed in a way that no one would suffer any
16 loss will excuse fraudulent action by him or false
17 representations by him which subjected others to the
18 possibility of such loss.

19 In connection with this issue, you may consider
20 the testimony, all of the testimony received here in this
21 trial, but the testimony of the witness Michel before the
22 grand jury as read to you may also be considered as
23 evidence in chief. I point out to you there is conflict
24 between the testimony at the trial and his testimony at the
25 grand jury and that conflict is a conflict like all other

1 issues of fact or questions of credibility, one which you
2 must resolve, that is, within your authority to resolve.
3
4 If you find that Mr. Michel told Defendant Goldbert that
5 prior to the time that any of these alleged mail fraud counts
6 took place, prior to the mailing of any letters, that a
7 substantial number of the lots or that a substantial number
8 of acres out of the subdivision were not suitable for
9 conventional septic tank sewage disposal systems, then you
10 may find that he had the requisite knowledge and intent.
11 Knowledge and intent exist in the mind. Since it is not
12 possible to look into a man's mind to see what went on, the
13 only way you have for arriving at a decision in these
14 questions is to take into consideration all the facts and
15 circumstances shown by the evidence including the exhibits,
16 And to determine from all such facts and circumstances
17 whether the requisite knowledge and intent were present
18 at the time in question.

19 Direct proof is not necessary. Knowledge and
20 intent may be inferred from all the surrounding circum-
21 stances of the case.

22 As far as intent is concerned, you are instructed
23 that every person is presumed to intend the natural and
24 probable or ordinary consequences of his actions.

25 You may consider, with respect to the
defendants' actual knowledge of a particular transaction,

A 64
Charge of the Court

mbrf 31

1275

1 all of the credible evidence in the case, and you
2 should ask yourselves such questions as these:

3 What was his age, background, experience? Does
4 that age, background, and experience make it likely or
5 unlikely, plausible or implausible, probable or improbable
6 that the defendant fully understands precisely what he
7 was doing when he performed whatever acts that you find on
8 the evidence he did perform.

9 These are only sample questions, samples of some
10 of the questions you might want to ask yourselves in
11 determining whether a defendant acted knowingly and wil-
12 fully.

13 So far as the corporation is concerned, as
14 I will explain to you later, you will reach the same
15 questions, make the same judgment, but your inquiry will
16 apply to the acts of the employees or the persons who
17 were acting for the corporation, because their knowledge and
18 intent, if within the scope of their authority, which I
19 will come to in a moment, is imputed and binding upon
20 the corporation.

21 I don't suggest even remotely the answers to
22 these and other questions. You and you alone, members
23 of the jury, are to answer these questions and determine
24 these facts.
25

A 65
Charge of the Court

mbrf 32

1276

If you find that the defendant whose guilt or innocence you are considering knowingly made false representations or knowingly concealed material facts as to the availability of or suitability of any lot or lots for sewage treatment facilities, then you may infer the requisite intent because the individual purchaser is confronted with a request to purchase without having facts before him which are material in deciding whether or not to buy the land.

If you find facts indicating a discrepancy between the benefits which the purchaser reasonably anticipated owing to misleading representations, if any, made by the defendant, and the actual benefits which the defendant intended to deliver or did deliver, then fraud in the bargain may be inferrable from such facts.

You may find that a defendant acted knowingly and wilfully if you find, beyond a reasonable doubt, that the defendant whose guilt or innocence you are considering had knowledge to formulate the intent to defraud, or that the defendant acted with a reckless disregard of whether the representations made to the public were true or false with a conscious purpose to avoid learning the truth.

Thus, you may draw the inference that the

A 66
Charge of the Court

mbrf 33

1277

1
2 defendant acted with the requisite knowledge if you find
3 he had direct knowledge of the need for other than con-
4 ventional septic tank systems in a substantial number of
5 lots at Hickory Run Forest, or if you find that he made
6 the positive assertion that septic tanks with conventional
7 systems would be sufficient, with a reckless disregard
8 of whether that assertion was true or false.

9 By reckless disregard I mean that the defendant
10 was indifferent to the consequences of his assertions that
11 septic tanks would operate.

12 In other words, ask yourselves, did the corpora-
13 tion through its agents assure purchasers that septic
14 tanks could be used on their lots with an indifference
15 as to the consequences if these assurances were not founded
16 on the facts.

17 Also, you may find that a defendant possessed
18 the requisite knowledge if he deliberately closed his
19 eyes to what otherwise would have been obvious. Nobody
20 can disclaim knowledge and thereby insulate himself
21 from responsibility while ignoring the facts which he would
22 or should otherwise have known from those things which
23 had been said to him or written to him or told to him.

24 Thus, if you find from all the evidence beyond a
25 reasonable doubt that the defendant either had direct

A 67
Charge of the Court

1 mbrf 34

1278

2 knowledge that conventional septic tanks would not function
3 in a major number or substantial number of lots in Hickory
4 Run Forest subdivision, and that defendant aided or
5 abetted the co-defendant in making or caused the co-
6 defendant to make assertions about the suitability of lots
7 for septic tank disposal systems with reckless disregard
8 as to the truth or falsity of those assertions, or the
9 defendant acted with a conscious purpose to avoid learning
10 the true facts about the sewage problems affecting the
11 subdivision, if any, then you may find that the defendant
12 possessed the knowledge that some of the land was unsuitable.

13 Of course in this context of unsuitability
14 I am including within the concept the availability of the
15 permits from the local authorities of the town of Penn
16 Forest.

17 I charge you that proof of motive is not a necess-
18 ary element of the crimes with which the defendants are
19 charged. Proof of motive does not establish guilt,
20 nor does lack of a motive establish that the defendant
21 is innocent.

22 If the guilt of a defendant is shown beyond
23 a reasonable doubt, it is immaterial what the motive for
24 the crime may be, or whether any motive be shown at all;
25 but the presence or absence of motive is a circumstance

A 68
Charge of the Court

1279

1 mbrf 35

2 which you may consider as bearing upon the guilt or innocence
3 of a defendant. It's not necessary to prove that every
4 step of the scheme was or could have been successfully
5 accomplished. Instead, the mail fraud crimes are
6 complete when the scheme is conceived and the mails are
7 used in an attempt to execute it. That instruction does not
8 apply to the so-called HUD counts which I am going to in a
9 moment.

10 Again, solely with respect to the mail fraud statute,
11 it is not necessary that anyone actually be deceived.
12 The offense is committed when the scheme has been devised
13 and in pursuance of it, the mails are used. Thus the
14 Government need not show on these counts that anyone
15 actually relied on the false representations. If the
16 defendants made such misrepresentations as part of a
17 deliberate scheme to defraud or to obtain money or property
18 by false representations intending others to rely on
19 it and set in motion steps which would normally be expected
20 to lead to the use of the mails, and the mails were in
21 fact used, that would be sufficient.

22 The fact that one or two persons in fact actually
23 have been defrauded is, I understand the Government
24 contends, not a necessary element for the Government to
25 prove in connection with the mail fraud counts except

mbrf 36

1280

as circumstantial evidence that the scheme actually was devised and existed and that the defendants intended the results accomplished by their direction of and participation in that scheme, if they did.

It is not necessary for you to find that the defendant you are considering realizes any gain whatsoever from the scheme; nor is it necessary that the intended victim suffer any loss.

The question is did the defendant you are considering knowingly devise a scheme to defraud and to obtain money or property and did he use the mails to further the scheme.

It is not necessary that the Government prove every misrepresentation alleged in the indictment. It is sufficient if they prove beyond a reasonable doubt that a scheme involving at least one of the kinds of deceptions alleged existed and amounted to a scheme to defraud, or a scheme to obtain money or property by false representations, pretenses, or promises.

I have already told you that use of the mails is an element. In order to constitute a violation of the statute the use of the mails must be in furtherance of the scheme to defraud. Each count charges a separate use of the mails and the gist of the crime is the use of the mails,

A 70
Charge of the Court

mbrf37

1281

1
2 and each separate use of the mails in furtherance of
3 the scheme constitutes a separate and distinct
4 offense.

5 It is not necessary for the Government
6 to prove that the defendants on trial or either of them
7 actually placed any letter in the mail. It is enough
8 if the testimony justifies a finding that such defendant
9 caused the mailing to be made in the ordinary course of
10 business, which mailing was made in furtherance of
11 the scheme.

12 If the defendant took steps which he knew
13 or could reasonably have foreseen at the time would
14 naturally and probably result in the use of mails, then
15 he has caused the mails to be used, and of course when I
16 say "he, " I include the corporation in this instruction.

17 The particular mailing you are considering must be
18 found beyond a reasonable doubt to have been in
19 furtherance of or for executing the scheme
20 to defraud.

21
22
23
24
25

A 71
Charge of the Court

mbrf 38

1282

It is sufficient if the items were mailed by an agent of the defendant. A mailing caused by one of the agents of the defendants furthering the scheme to defraud binds both defendants if you find both defendants participated in the fraudulent scheme.

I have talked with you earlier about aiding and abetting, and instruct you that if the defendant Goldberg aided and abetted the defendant Pocono International, in devising a scheme to defraud, for example, by causing the corporation to commit the crime, Mr. Goldberg is as guilty as the corporation is of the crimes which are constituted in those acts. While there is no precise rule as to what acts constitute aiding and abetting it is enough that a defendant in some way associated himself with the criminal venture, that he participated in it as something he wishes to bring about, or in other words that he seeks by his action to make it succeed; and of course he must do so knowingly.

To find the defendant 'guilty' of aiding and abetting you must find something more than mere knowledge on his part that a crime was being committed by others.

A mere spectator at a crime is not a participant or aider and abettor, but in order to convict it is not necessary that you find that the defendant himself

mbrf 39

1283

1 did any of the criminal acts since participation in the
2 crime, can, for example, be found if you found that that
3 defendant knowingly aided, induced or caused another person,
4 whoever it may be, to commit the crime.
5

6 Criminal participation by a defendant may be
7 shown by any act even of relatively slight importance,
8 which you find was committed by the defendant, and which
9 involved his participation in the crime. Evidence of
10 participation may be circumstantial evidence from which
11 you conclude he was participating.

12 The Government is not required to show that a
13 defendant had a pecuniary interest in the crime or that
14 he made any money on the wrong, although in this case
15 the Government claims the defendants did make money.
16 It is sufficient that the Government establish that the
17 defendant showed by what he did or said or caused others
18 to say or do that he sought to bring about the
19 success of the crime even if by an act of relatively
20 small importance.

21 Now the instruction on aiding and abetting
22 also apply to violations of the Interstate Land Sales
23 Act, and when I commence my discussion of those portions
24 of the charges, I will not repeat my discussion of the
25 element of aiding and abetting. What I have said about

mbrf 40

1284

and abetting applies generally to any of the crimes charged in this indictment.

I have previously instructed you and I again repeat that a corporation is entitled to the same due process of law and has all the same rights in a proceeding of this nature as an individual has, and you must treat the defendant Pocono International Corporation with the same fairness as you would if instead of being a corporation, it was an individual person on trial before you.

Of course a corporation is an artificial entity, and it cannot act or do anything wilfully or knowingly; the words which I have mentioned to you, nor can it have any will of its own except through its officers and agents.

In order to find the defendant corporation Pocono International guilty of any crime, the Government must prove that the unlawful acts were committed in its behalf knowingly and wilfully by persons who are officers or agents of the corporation, and furthermore that while doing so, the persons so acting were acting in behalf of the corporation, and in furtherance of its own interests as contrasted with being engaged in some private endeavor of their own.

There is evidence in this case that will permit

mbrf 41

1285

1 the jury to find that Mr. Charles Goldberg was an agent
2 of the corporation, that he was its chief operating
3 officer at least a part of the time comprised within the
4 case, that Mr. Leventhal or Mr. Ebenstein known as Ric of
5 the Poconos or that various salesmen employed by Sellamerica,
6 Ltd. and Sellamerica, Ltd. itself were agents of the
7 corporation Pocono International.
8

9 The salesmen have been mentioned to you in the
10 testimony. One was called Big Red. Another was called
11 Marty and I believe there was another who was called Ron.

12 In each case when considering the actions of the
13 corporation through its agents, the jury will have to
14 consider whether the agent acted knowingly and wilfully
15 and within the scope of his authority, that is within the
16 area of those things which he had been requested or
17 directed to do in behalf of the Pocono International
18 Corporation such as selling lots at Hickory Run Forest.

19 And when I speak of the defendant acting knowingly
20 and wilfully, or when I discuss any other element of the
21 crime insofar as it concerns the corporate defendant,
22 you will remember the corporate defendant has to act
23 through its agents and the agents have to be acting within
24 the scope of their authority in order for their acts
25 to be those of the corporation.

A 75
Charge of the Court

mbrf 42

1286

1
2 These agency principles I have mentioned do not
3 apply to Mr. Goldberg, and he is to be judged on his own
4 acts and conduct and not on anything that may have been
5 done in his absence or not under his direction by Big
6 Red or Marty or Ron, or any of the others.

7 Would you all like to stand up and stretch
8 a minute?

9 Why don't you all do that?

10 (Pause.)

11 The remaining counts charge the defendants
12 Charles Goldberg and Pocono International Corporation with
13 violating the Interstate Land Sales Act, Title 15,
14 United States Code, Section 1703, and so forth.

15 As I mentioned to you before, there were three
16 different violations of the Interstate Land Sales Act
17 included. The first alleged violation is that sales of
18 lots in Sections 1 through 4 inclusive of Hickory Run
19 Forest were knowingly made to purchasers before the
20 Federal Housing and Urban Development Department, which
21 we have called HUD in this trial, approved the statement
22 of record filed by the defendants.

23 The second type of violation of the Interstate
24 Land Sales Act charged is that with respect to certain
25 purchasers, the defendant Pocono failed to furnish property

A 76
Charge of the Court

1287

1 mbrf 43

2 reports to the buyers before lots were purchased.

3 The third type of violation of the Interstate
4 Land Sales Act alleges that the defendants knowingly
5 defrauded the purchasers by selling the land without stating
6 the true facts about the unsuitability of the soil for
7 conventional septic tank disposal systems.

8 I refer to this third type as the Land Sales Act
9 fraud count or the HUD fraud counts simply for ease in
10 discussion. While there may seem to you to be some similarity
11 between the elements of the mail fraud statutes which
12 I have mentioned to you, and the so-called Land Sales
13 Act fraud or HUD fraud, there is at least one significant
14 difference.

15 To find a defendant guilty of the mail fraud
16 charges, you must find each element beyond a reasonable
17 doubt as I have charged you. One of the elements that you
18 must so find to convict under the mail fraud statute is that
19 letters were mailed in furtherance of the fraudulent scheme.

20 Mailing or use of the mails is an element of that
21 crime.

22 On the other hand, mailing need not be an element
23 of the counts charging a violation of the Land Sales
24 Act fraud count. The fact that you find in accordance with
25 my instructions, if you do, that a mailing did or did

not take place as of no consequence with respect to the Interstate Land Sales Act fraud counts.

If you find either defendant guilty of a mail fraud count with respect to a particular purchaser or lot, you may not consider the use of the mails in finding whether or not that defendant is guilty of a Land Sales Act fraud upon that same purchaser or with respect to that same lot, because obviously the Government cannot have it both ways, and they cannot rely upon that mailing to support a mail fraud charge on a single purchaser and then rely on that mailing to sustain the interstate aspects of an Interstate Land Sales fraud count.

Now, Counts 19, 21, 27, 29, 31, 33, 41, charge the defendants with having violated the anti-fraud provisions of the Land Sales Act.

In order to find the defendant whose guilt or innocence you are considering guilty of the crime charged in any of these counts, you must find as to that count the following essential elements beyond a reasonable doubt. These are the elements.

First, that the defendant was a developer, as I will define that word for you at the time of the acts charged in the indictment.

Second, that in selling or offering to sell lots in the subdivision, the defendant obtained money

A 78
Charge of the Court

1289

1 mbrf 45

2 means of material misrepresentations included in the
3 statement of record or property report or any other pertinent
4 information on which a purchaser relied, or that a person
5 aided or abetted another in obtaining money in
6 this way .

7 Third, that for the purposes of executing the
8 scheme, the defendant or its agents directly or indirectly
9 used means or instruments of transportation or
10 communication in interstate commerce other than the mails,
11 and that the defendant acted wilfully and knowingly.

12 Now, the first element that you must find beyond
13 a reasonable doubt is that the defendant whose guilt or
14 innocence you are considering was a developer. A
15 developer is any person or corporation or organization
16 who, directly or indirectly, sells or offers to sell or
17 advertises for sale any lots in a single subdivision divided
18 into or proposed to be divided into 50 or more lots.

19 Though there hasn't been any dispute that Hickory
20 Run Forest was a development or subdivision containing well
21 over 50 lots, you still must determine that fact for
22 yourself beyond a reasonable doubt as one element of
23 this charge.

24 You must also determine whether Charles Goldberg
25 and Pocono International Corporation were in the business

A 79
Charge of the Court

mbrf 46

1290

of selling lots in Hickory Run Forest.

The second element which the Government must prove beyond a reasonable doubt, is that in selling or offering to sell lots in the subdivision, the defendant obtained money by means of material misrepresentations included in the statement of record or property report or other pertinent information upon which the purchaser relied.

There is no serious dispute in this case that the defendants received money. The Government contends that the alleged misrepresentations were contained in the statement of record filed with HUD and in the property reports given to some purchasers.

There is no serious dispute that the alleged misrepresentations concerning conventional septic tank disposal systems were material, as I have already defined that term, and pertinent to the lots.

The property report is in evidence. I believe it has been read to you in the course of the trial; Exhibit 7-A. The portion relied upon is contained therein in paragraph 10-B. If you want the Court to read it you may send a note out of the jury room asking the Court to do so, or if you want to examine any or all of the exhibits in the case, the foreman will send out a note to the Court saying what exhibits will be required,

1 and in order to save time I will not read it at this time
2 because it has been read several times during the trial.
3

4 Finally, there is a contention that alleged
5 misrepresentations were stated orally to some purchasers.
6 It is for you to determine whether or not the misrepre-
7 sentations concerning the availability of conventional septic
8 tank sewage disposal systems constructed pursuant to permits
9 issued by the township were material, whether they were
10 fraudulent, and you must decide whether or not the
11 individual purchaser whose purchase you are considering
12 relied on the alleged misrepresentations.

13 By reliance is meant that you must determine
14 whether the purchaser acted in part in making his decision
15 whether or not to buy this lot based on the alleged mis-
16 representation to him.

17 In other words, did the purchaser consider the fact
18 that sewage disposal was necessary and could be accomplished
19 by on-lot septic tank disposal systems subsurface with
20 respect to which permits would be available from local
21 authorities?

22 You will note that this is entirely different
23 from the mail fraud counts where it is not necessary to
24 show reliance.

25 The next element you must consider if you have
found the other elements beyond a reasonable doubt is that

mbrf 48

1292

the defendant or his or its agents directly or indirectly used means or instruments of transportation or communication in interstate commerce.

I charge you as a matter of law that a telephone, if you found the telephone used, as an instrument of communication in interstate commerce. The travel of a personal automobile, if you find they were used, from New York to Pennsylvania, on interstate highways such as Route 80, is the use of an instrument of transportation in interstate commerce.

Of course there is no serious dispute here about the defendants' use of telephones, about causing the purchaser to travel interstate by automobile between New York and Pennsylvania.

The final element of this charge is that you must find beyond a reasonable doubt that the defendant acted wilfully and knowingly, and I have already defined this for you with respect to the mail fraud charges, and the definition is the same with respect to these counts.

The counts pertaining to an alleged failure to have approved statements of record, Counts 16, 18, 20, 26, 30 and 32, charge that each of the defendants violated the Land Sales Act by selling lots in Sections 1 through 4 of Hickory Run Forest when a statement of record had not yet

A 82
Charge of the Court

1 mbrf 49

1293

2 been approved by HUD and was therefore not in effect.

3 In order to find the defendant whose guilt or innocence
4 you are considering guilty of that crime charged in these
5 counts pursuant to the statute I previously read to you,
6 you must find the following elements beyond a reasonable
7 doubt.

8 First the defendant was a developer, second that
9 sales of lots were made when no statement of record was
10 in effect with respect to that lot, and third, that
11 means or instruments of transportation or communication
12 in interstate commerce other than the mails were used in
13 connection with the sales, and fourth, that the defendant
14 acted knowingly and wilfully.

15 As with all elements of all counts, you must
16 find the first, third and fourth elements beyond a reason-
17 able doubt, in order to find that the defendant whose guilt
18 or innocence you are considering is guilty.

19 These three elements, developer, use of interstate
20 facilities, and intent, have already been defined for
21 you. The only element of the charge which has not been
22 defined for you is the second element. You must find
23 beyond a reasonable doubt that sales of lots in Sections 1
24 through 4 of Hickory Run Forest occurred prior to a state-
25 ment of record being in effect. It is stipulated that the

A 83
Charge of the Court

mbrf 50

1294

statement of record for Sections 1 through 4 was effective as of August 17, 1972.

Now, I charge you as a matter of law that the sales took place at the time a contract of sale or agreement of purchase was signed. There is no dispute that the agreements of purchase in Counts 16, 18, 20, 26, 30 and 32 were signed prior to the effective date.

The portion of those counts pertaining to failure to furnish property reports, 16, 18, 20, 26 and 28, the defendant corporation only is charged with having violated the Interstate Land Sales Act by selling certain lots in Sections 1 through 4, without furnishing the purchaser with the property report.

I caution you that the defendant Goldberg is not charged with failure to furnish the property reports. That charge pertains only to the corporation.

The elements of this charge are the same as the elements of the charge that the defendant corporation sold lots without an effective statement of record except for one difference. You need not determine whether or not a statement of record was in effect on these charges because even if there was a statement of record in effect, there is a violation of law if the property report was not delivered prior to the signing of the contract of

1 mbrf 51

2 sale.

3 In some of these counts, two charges are combined,
4 notably 16, 20 and 26; and they contain two of the charges.
5 For example, Count 16 charges that with respect to the
6 purchaser John Jordan, whom you will remember testified
7 here, the defendant corporation sold a lot without an effec-
8 tive registration and the defendant corporation failed to
9 furnish Jordan with a property report.

10 In counts such as these where both of these
11 violations are charged in a single count, you may convict
12 the defendant corporation if in accordance with my prior
13 instructions you find beyond a reasonable doubt that
14 it committed either crime.

15 In other words, in those counts where the
16 corporation is charged with both crimes, not having
17 an effective registration prior to making the sale of
18 a lot, the Government need only prove one beyond a reason-
19 able doubt, not both.

20 I will now read Court's Exhibit 3:
21
22
23
24
25

A 85
Charge of the Court

mbrf 52

1296

The Grand Jury charges:

1. That at all times relevant, Pocono International Corporation was and is a corporation organized under the laws of the Commonwealth of Pennsylvania for the purpose, amongst others, of developing certain tracts of rural land situated in the State of Pennsylvania in an area commonly known as the Pocono Mountains, and particularly for the development of an area known as Hickory Run Forest situated in Carbon County, Penn Forest Township.

2. Charles Goldberg, at all times relevant, was and is the principal stockholder, director and officer of Pocono International Corporation, and has directed the activities of that corporation since its incorporation in September, 1969.

3. The subdivision known as Hickory Run Forest consists of approximately 820 acres, divided into 8 numbered sections and further subdivided into 966 lots. Prior to its acquisition, the acreage which now forms Hickory Run Forest was a mostly wooded, gently rolling vacant and rural countryside, bordered by Hickory Run State Park and other public lands used for municipal watersheds.

4. Adequate provision for sanitary disposal of household waste and sewage is essential for the development of rural lands into a subdivision containing

A 5
Charge of the Court

1 mbrf 53

1297

2 numerous building lots. Household waste and sewage
3 can be disposed of through the construction and use of
4 a central collection and treatment system by the developer,
5 or by the construction of on-site subsurface treatment
6 devices such as a septic tank system. The use of
7 conventional septic tank systems to dispose of human and
8 household waste and sewage is not suitable for most of the
9 building lots in Hickory Run Forest because of the seasonal
10 high-water table and slow permeability, shallowness and
11 stoniness of soil conditions.

12 5. Non-conventional on-site subsurface systems
13 for disposal of human and household waste and sewage, such
14 as aeration tanks and sand filter beds, will not function
15 properly where there is a high seasonal water table and are
16 of such an experimental nature that officials of the
17 various townships of the Commonwealth of Pennsylvania have
18 no authority to approve their use by property owners.

19 6. Sellamerica, Ltd., at all times relevant
20 was and is a corporation organized under the laws of the
21 State of New Jersey in 1971 with principal offices in
22 Englewood, New Jersey, and New York City, New York.
23 Sellamerica was organized for the purpose, amongst others,
24 of selling lots situated in Hickory Run Forest to the
25 residents of the Metropolitan New York City area, including

mbrf 54

1298

those residents situated in the Southern District of New York. Heinz Ebenstein, also known as Rick Ebenstein, or Ric of the Poconos, was at all times relevant the principal stockholders, direct and president of Sellamerica, Ltd., and from November 4, 1971 has been the vice-president of Pocono International Corporation. The aforesaid Charles Goldberg, at all times relevant, has been the vice-president of Sellamerica, Ltd.

Sellamerica, Ltd., and Ebenstein, as the agents of Pocono International Corporation, employed numerous salesmen and telephone solicitors and placed advertisements in newspapers and on radio and television, which were designed to promote and further the sale of building lots in Hickory Run Forest through the use of the aforesaid means of Interstate commerce.

Counts one through fifteen.

8. Each and every allegation of paragraphs 1 through 8 of the introduction is hereby repeated, realleged and incorporated by reference in each of Counts 1 through 15 of this indictment, as though fully set forth therein.

9. That from on or about January 1, 1971 and continuing up until the date of this indictment, defendants Charles Goldberg and Pocono International Corporation, devised and intended to devise a scheme and

1 mbrf 55

1299

2 artifice to defraud and to obtain money and property by
3 means of false and fraudulent pretenses, representations
4 and promises from numerous persons residing within the
5 Southern District of New York and such other persons who
6 could be and would be induced by the defendants Charles
7 Goldberg and Pocono International Corporation to purchase
8 and agree to purchase real property situated in a
9 subdivision known as Hickory Run Forest from Pocono
10 International Corporation, well knowing at the time that
11 the said pretenses, representations and promises, which are
12 specifically described in paragraph "12" hereinafter,
13 would be and were false when made and which scheme and arti-
14 fice to defraud and to obtain money and property by means
15 of false and fraudulent pretenses, representations and
16 promises, so devised and intended to be devised by the said
17 defendant Pocono International Corporation and Charles
18 Goldberg, was in substance as follows:

19 10. It was a further part of said scheme for
20 Sellamerica, Ltd. and Heinz Ebenstein to be the agents of
21 Pocono International Corporation for the purposes of promoting
22 and selling lots in Hickory Run Forest to residents of
23 New York City Metropolitan area.

24 11. It was a further part of the scheme that the
25 defendants thorough their agents, would and did offer for

mbrf 56

1300

sale, sell and cause to be sold lots and parcels of real property in a subdivision located in Carbon County, Pennsylvania, commonly known as Hickory Run Forest.

12. It was a further part of the scheme that the defendants, and their agents, would and did make the following false and fraudulent pretense, representations and promise that purchasers of lots in the Hickory Run Forest development would be able to dispose of human and household sewage and waste by constructing on-site septic tank systems which would be approved by the Township of Penn Forest.

13. It was a further part of the scheme that on or about the dates hereinafter set forth, in Carbon County and elsewhere in the State of Pennsylvania, the defendants, Pocono International Corporation and Charles Goldberg, unlawfully, wilfully and knowingly and for the purpose of executing said scheme and artifice and attempting to do so did place, or cause to be placed, in authorized depositories for mail, certain matter and did cause to be delivered by mail according to the directions thereon, matter addressed as hereinafter set forth, to be delivered by the United States Postal Service and United States Post Office:

Count 1, on or about August 16, 1972, sender

1 mbrf 57 1301

2 Charles Goldberg, addressee Sigfried & Nitsa Delgado.

3 Count 4, on or about August 22, 1972, sender
4 Pocono International Corporation, addressee Stephen &
5 Joan Arella.

6 Count 7, on or about October 31, 1972, sender
7 Charles Goldberg, addressee Salvatore & Maria DeMeglio.

8 Count 8, on or about November 7, 1972, sender
9 National Abstract Company or other agent of Pocono
10 International Corporation, addressee Alexius & Elizabeth
11 Bach.

12 Count 9, on or about February 15, 1973, sender
13 National Abstract Company, addressee, Zvi Hava.

14 Count 11, on or about February 26, 1973, sender
15 National Abstract Company, addressee Francis Cancro.

16 Count 12, on or about February 26, 1973, sender
17 National Abstract Company, addressee Attilio Perri.

18 Count 16:

19 The Grand Jury further charges:

20 15. On or about the 18th day of July, 1972 and
21 continuing up until the date of this indictment, the defendants,
22 both of whom were then and at all pertinent times mentioned
23 herein developers as defined in 15 USC 1701(4) within the
24 Southern District of New York, directly and indirectly
25 make use of means and instruments of transportation and

mbrf 58

1302

communication in interstate commerce and of the mails,
to wit: a Deed was mailed from the State of Pennsylvania
to the State of New York, to sell, offer and cause to be
sold a Lot described as Lot 25, Sections 1-4, in Hickory
Run Forest, a subdivision as defined in 15 USC 1701(3),
which lot has not been registered with the Secretary of
Housing and Urban Development in that no statement of
record was in effect in accordance with 1704, 1705 and 1706
of Title 15 of the United States Code; nor was a printed
Property Report meeting the requirements of 15 USC 1707
furnished to the purchasers, John and Frances Jordan, in
advance of signing a contract and agreement for deed of sale
between said purchasers and the seller, Pocono
International Corp., all in violation of Title 18 USC
2; Title 15 USC 1703(a)(1) and Title 15 USC 1717.

Count 18:

The Grand Jury further charges:

17. On or about the 16th day of August, 1972,
and continuing up until the date of this indictment,
the defendants, both of whom were then and at all pertinent
times mentioned herein developers as defined in 15 USC
1701(4) did, within the Southern District of New York
directly and indirectly make use of means and instruments
of transportation and communication in interstate commerce

1 mbrf 60

2 and did employ a device, scheme and artifice to defraud,
3 and did obtain money and property by means of material
4 misrepresentations with respect to information pertinent
5 to the said lot and the said subdivision, and upon which
6 the purchasers, Sigfried and Nitsa Delgado, relied, and did
7 engage in a transaction, practice and course of business
8 which operated and would operate as a fraud and deceit
9 upon a purchaser; all as more fully and specifically set
10 forth in Paragraphs 1 through 14 of this indictment and
11 here re-alleged; all in violation of Title 18, USC 2; Title
12 15 USC 1703 (a)(2) and Title 15 USC 1717.

13 Count 20:

14 The Grand jury further charges:

15 19. On or about the 22nd day of August, 1972,
16 and continuing up until the date of this indictment, the
17 defendants, both of whom were then and at all pertinent times
18 mentioned herein developers as defined in 15 USC 1701(4) did,
19 within the Southern District of New York, directly and
20 indirectly make use of means and instruments of
21 transportation and communication in interstate commerce
22 and of the mails, to wit: a Deed was mailed from the State
23 of Pennsylvania to the State of New York, to sell, offer and
24 cause to be sold a Lot described as Lot 129-B, Sections
25 -4, in Hickory Run Forest, a subdivision as defined

A 93
Charge of the Court

1 mbrf 61

1305

2 in 15 USC 1703(3), which Lot had not been registered
3 with the Secretary of Housing and Urban Development in that
4 no State of Record was in effect in accordance with 1704,
5 1705 and 1706 of Title 15 of the United States Code; nor
6 was a printed Property Report meeting the requirements of
7 15 USC 1707 furnished to the purchasers Stephen and Joan
8 Arella, in advance of signing a contract and agreement for
9 deed of sale between said purchasers and the seller, Pocono
10 International Corp.; all in violation of Title 18 USC
11 2; Title 15 USC 1703(a)(1) and Title 15 USC 1717.

12 Count 21:

13 The Grand Jury further charges:

14 20. On or about the 22nd day of August, 1972,
15 and continuing up until the date of this indictment,
16 the defendants, both whom were then and at all pertinent times
17 mentioned herein developers as defined in 15 USC 1701(4)
18 did, within the Southern District of New York, directly
19 and indirectly make use of means and instruments of
20 transportation and communication in interstate commerce
21 and of the mails, to wit: a Deed was mailed from the State
22 of Pennsylvania to the State of New York, to sell, offer
23 and cause to be sold a Lot described as Lot 129-B,
24 Sections 1-4, in Hickory Run Forest, a subdivision as
25 defined in 15 USC 1701(3); and did employ a device, scheme

mbrf 62

1306

and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and to the said subdivision, and upon which the purchasers, Stephen and Joan Arella, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 18 USC 2; Title 15 USC 1703(a)(2) and Title 15 USC 1717.

THE COURT: Count 26 is the same in its wording as the prior count which I read to you having to do with sale of a lot which had not been registered in that no Statement of Record was in effect and no printed Property Report was furnished to the purchasers.

The purchasers named in that count are Salvatore and Maria DeMeglio.

Count 27 refers also to Salvatore and Maria DeMeglio and alleges a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser all as more fully set forth in paragraphs 1 through 14 of this indictment and here re-alleged and is identical as to form as to the

A 95
Charge of the Court

1 mbrf 63

1307

2 immediately preceding land sales charged and so because
3 of the hour I am going to abbreviate my reading of it.

4 Count 28:

5 The Grand Jury further charges:

6 27. On or about the 15th day of February, 1973,
7 and continuing up until the date of this indictment,
8 the defendants, both of whom were then and at all pertinent
9 times mentioned herein developers as defined in 15 USC
10 1701(4) did, within the Southern District of
11 New York, directly and indirectly make use of means and
12 instruments of transportation and communication, in
13 interstate commerce and of the mails, to wit: A Deed
14 was mailed from the State of Pennsylvania to the State
15 of New York, to sell, offer and cause to be sold a Lot
16 described as Lot 135-B, Sections 1-4, in Hickory Run Forest,
17 a subdivision as defined in 15 USC 1701(3), in that no
18 printed Property Report meeting the requirements of 15 USC
19 1707 furnished to the purchaser, Zvi Hava, in advance
20 of signing a contract and agreement for deed of sale between
21 said purchaser and the seller, Pocono International
22 Corp; all in violation of Title 18 USC 2, Title 15 USC
23 1703(a)(1) and Title 15 USC 1717.

24 Count 28 is identical with the prior land
25 sales, fraud count except that it refers to Lot 135-B

1 mbrf 64

1308

2 and the purchaser Zvi Hava.

3 Count 30 concerns the sale of an unregistered --
4 sale of a lot, 260-B in Sections 1 through 4, which had not
5 been registered and that no Statement of Record was in effect
6 and pertains to a sale to Francis P. L. Cancro.

7 Count 31 also applies to Cancro and alleges
8 the same fraud count as identically as to form
9 previously read to you.

10 Count 32 pertains to Attilio Perri, Lot 261-B
11 in that it had not been registered and charges that the
12 sale was made when the lot had not been registered,
13 that ~~no~~ Statement of Record was in effect.

14 Count 33 is a fraud count with respect to Attilio
15 Perri. I think since the wording is so nearly identical,
16 and since you will be permitted a copy of it, I will
17 not read it verbatim.

18 THE COURT: Count 41 has to do with a land fraud
19 count concerning Alexius and Elizabeth Bach and is identical
20 in form with the prior counts read.

21 Now the date of filing of this indictment was
22 given to you earlier and it is June 27, 1973.

23 To review certain of these fraud counts
24 under the Interstate Land Sales Act, insofar as
25 concerns Alexius Bach, the Government relies there on the

1 mbrf 65

1309

2 claimed falsity in the Property Report and Statement of
3 Record. There is no testimony as to any oral discussions
4 with Alexius Bach. The same is true with respect to John
5 Jordan.

6 Insofar as concerns Stephen Arella, in that
7 Count 21 the Government contends that the corporate
8 defendant Pocono International Corporation made a material
9 misrepresentation with respect to Lot 129-B to the purchaser
10 Stephen Arella in that a person the Government contends
11 was a salesman for Pocono known as Bob Braunes stated
12 to him at or about the time he purchased the lot that there
13 would be no trouble with sewage disposal because
14 cess pools or septic tanks could be used.

15 If you find that this is what occurred and you
16 further find that the statement was false in that it was
17 not possible to construct a conventional septic tank
18 system on that lot, without the use of a so-called turkey
19 mound, and if the jury further finds that the corporation
20 through one or more of its officers or agents particularly
21 Bob Braunes is in this case, knew that the representation
22 was false, as I previously defined falsity to you, and
23 you further find that the purchaser relied on the statement
24 made to him, the purchaser Steven Arella, the corporation
25 may be convicted on this count.

mbrf 66

1310

As to the purchasers DiMeglio and Zvi Hava there is no evidence of any alleged claimed oral misrepresentation by any salesman. With respect to Count 31 the Government contends that the corporate defendant Pocono International Corporation, made a material misrepresentation with respect to Lot 261-B to the purchaser Francis Cancro, in that a person the Government contends was a salesman for Pocono, known as Big Red, stated to Mr. Cancro at or about the time he purchased Lot 261-B, something to the effect that despite the watery state of the land, that samples had been taken and checked, for a septic tank system and that such a system could be used.

I impart to you the same instruction with respect thereto as previously mentioned insofar as concerns Arella; and again of course when I state a contention, it's only a contention, it's no suggestion on my part as to what the evidence shows, it is for your determination. These contentions as you all know by now are denied and strongly disputed by the defendants.

In connection with Count 33, which is Attilio Perri, the claim is made by the Government that the salesman or alleged salesman known as Big Red stated to Mr. Perri about the time he purchased Lot 261-B to

mbrf 67

1311

the effect that no special septic tank would be required;
and I impart to you the same instruction with respect
thereto as pertains to Arella, and Cancro.

Under your oath as jurors you cannot allow consideration of the possible punishment which may be inflicted upon the defendant if convicted to influence your verdict in any way, or in any sense to enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and determine the guilt or innocence of each defendant as to the open charges against it or him, solely upon the basis of the evidence and the law.

You are to decide the case upon the evidence and the evidence alone; and you must not be influenced by any assumption, conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

If you fail to find beyond a reasonable doubt that the law has been violated with respect to any count or any defendant, you should not hesitate for any reason to find a verdict of acquittal, but on the other hand if you should find that the law has been violated as charged, you should not hesitate because of sympathy, or any other reason, to render a verdict of guilty as a clear warning that a crime of this character may not be

1 mbrf 68

2 committed with impunity.

3 The public is entitled to be assured of this.

4 A word about deliberating. Each juror is entitled
5 to his or her own opinion. Each should exchange views
6 with fellow jurors. That is the purpose of jury
7 deliberations, to discuss and consider the evidence;
8 to listen to arguments of fellow jurors, and to present
9 your individual views and consult with one another and
10 to reach a verdict based solely and wholly on the evidence.
11 If you can do so without doing violence to your own
12 individual judgment.

13 Each one of you must decide this case for himself
14 or herself after consideration with your fellow jurors;
15 but you should not hesitate to change an opinion which you
16 may hold which after discussing it with fellow jurors
17 appears erroneous in the light of the discussion viewed
18 against the evidence and the law.

19 However, if after carefully weighing all the
20 evidence and arguments of your fellow jurors, you
21 entertain a conscientious view that differs from the others,
22 you are not to yield your judgment and give up simply
23 because you are outnumbered or outweighed or outvoted.
24 Your final vote must reflect your individual conscientious
25 judgment as to how this case should be decided.

1 mbrf 69

11 3

2 In order to find a verdict on any single count
3 on any single defendant there must be a unanimous verdict.

4 At this time the clerk would like to see the four
5 alternates, that is Miss Richard, Miss Rock, Mr. Roniert
6 and Mrs. Levine, and if you will all just step through
7 taht door the clerk would like to see you and I won't keep
8 you any longer.

9 The Court thanks you for your careful attention
10 in this case and it turned out that we were spared, we
11 didn't have any illness or we didn't need to substitute
12 anybody and we are most thankful for what you have done.

13 In the course of your deliberations, you may
14 desire to have some part of the testimony read to you.
15 You might even find that you are uncertain as to the meaning
16 of some part of the Court's instructions. In such a case,
17 you may send a note to the Court through your foreman asking
18 for whatever will clear up any of the questions that you
19 may have.

20 If you want an exhibit, a particular exhibit,
21 or even if you want all the exhibits, Mrs. Cutler will
22 send a note out by giving it to the marshal stating
23 what you want.

24 Now, anything else that you may wish to take up
25 with the Court will be accomplished by note. However,

1 mbrf 70

1314

2 please, Mrs. Cutler, do not indicate in the note how the
3 division may be, if there is any or how you stand, how your
4 vote may be divided on anything.

5 Of course, if you have a verdict you may tell
6 the marshal that you have a verdict.

7 Mrs. Cutler is the foreman and she will send
8 out any communications from the jury.

9 Let me finally state your oath sums up your
10 duty, that is without fear or favor to anyone you will
11 well and truly try the issues between each defendant
12 and the Government of the United States based solely
13 upon the evidence and the Court's instructions as to
14 the law.

15 It is important to each of the defendants,
16 it is important to the Government.

17 At this time swear the marshal, Mr. Cloit.

18 (Two United States marshals were duly sworn.)

19 THE COURT: A word about scheduling.

20 Any of you who wish to have telephone messages
21 sent to your homes may do so by writing out the number
22 and the person and giving it to one of my clerks.

23 I do not propose to sequester or lock up the
24 jury. When you come to a point in the evening when you
25 believe that you would like to resume work tomorrow, the

1 mbrf 71

1315

2 foreman will send out a note, and tell me that you would
3 like to break for the day. I will expect you all to come
4 back on time tomorrow morning to finish your work. Do not
5 discuss the case in the interim. Do not speak to anyone
6 outside about it or read anything about it or read
7 anything about the subject matter or do anything which
8 might affect your openmindedness. All deliberations
9 have to take place in the jury room when all jurors
10 are present, and where they have an opportunity to partici-
11 pate equally.

12 Furthermore, if you stay down beyond 7:00
13 o'clock, the marshal will take you to dinner; and don't
14 discuss the case in a restaurant because the proper place
15 for deliberations on a case is in the jury room when every-
16 body can hear and no one else can hear.

17 If you stay beyond 9:00, I will arrange for a
18 bus to take you home, those of you who want to go that
19 way but I am not suggesting you have to stay that late.
20 If you want to quite by 7:00 o'clock just send out a note
21 and tell me that's the wishes of the jury and it will be
22 placed in effect.

23 I ask you to remain seated here for a moment
24 more and don't discuss the case, because I must confer
25 with the attorneys to see if there are any additional

1 mbrf 72

1316

2 instructions which they may believe I should give to you
3 and because I might have something further to say, please
4 don't discuss the case until I return.

5 The marshals please take charge of the jurors.
6 Jurors remain in the box. Counsel and the reporter please
7 come into the robing room.

8 (In the robing room, post-charge discussion.)

9 THE COURT: I will take additional requests
10 first and then exceptions.

11 MR. SCHWARTZ: The Government has no additional
12 requests or exceptions, your Honor.

13 MR. TAIKEFF: The defense has two, your Honor.
14 The first concerns the fact that your Honor has made
15 reference to conflicts between the trial testimony and the
16 grand jury testimony of the witness Michel, but has not
17 done so with respect to the other witnesses where there
18 are clearcut contradicitons; and I request that your
19 Honor do so.

20 THE COURT: What is there that you want me to
21 say about them? I don't recall any that are truly material
22 in anyone's view of this case.

23 MR. TAIKEFF: Well, generally, the materiality --

24 THE COURT: I think I instructed them generally
25 as to how they resolve all conflicts but I don't

mbrf 73

1317

remember any truly significant conflicts and I know of no other situation where the Government proffered the evidence which I recall they did, it may have been done in a side bar conference and I said nothing to the jury at the time, as evidence in chief. There was some trivial differences with Failla. If you will cite me to something specific, and tell me exactly what you would like me to say, I will consider it.

MR. TAIKEFF: I will, yes, sir. Putting Mr. Failla aside for the moment, it is significant whether or not a Property Report is given to a purchaser before or after he signs the contract; as your Honor charged the jury; and there were I think two and possibly more instances where people testified in the trial that they had received the Property Report after they signed where they previously testified before the grand jury or in one instance where they had been interviewed by the Government where their answer was contrary, that they had received it before they signed the contract.

THE COURT: If that were really so I don't see the basis for the indictment on that particular charge.

MR. SCHWARTZ: And there are no charges in the indictment on those particular purchasers.

1 mbrf 74

1318

2 THE COURT: I didn't understand there were
3 any. I think you are mistaken, Mr. Taikeff. I recognize
4 that you are in very close touch with the details of
5 this case but I think you are mistaken.

6 MR. TAIKEFF: It may be, your Honor, that the
7 testimony that came in in that past hour relates to counts
8 which do not contain such a charge.

9 MR. SCHWARTZ: That is true.

10 MR. TAIKEFF: I probably have erred in that regard.

11 THE COURT: What is your other request?

12 MR. TAIKEFF: I also believe there were conflicts
13 between Mr. Failla's testimony in the courtroom and in the
14 grand jury.

15 THE COURT: There were but I don't know that
16 there were any that were -- where the grand jury testimony
17 was relied on as evidence in chief. It was merely taken
18 for impeachment and I did cover conflicts in considering
19 impeachment.

20 MR. TAIKEFF: I understand that, your Honor,
21 but as I read the grand jury testimony of Mr. Failla,
22 although he was rather clear about the fact that he
23 had discussed the various aspects of the corrections
24 that had to be made with Mr. Goldberg, he never once
25 in response to several attempts in that regard, testified

1 mbrf 75

1319

2 that he specifically told Mr. Goldberg that the filing
3 was not effective. In fact --

4 THE COURT: I didn't understand him to say so on
5 the trial that he specifically told him it was not effec-
6 tive.

7 MR. TAIKEFF: On his direct he said so, your
8 Honor.

9 THE COURT: He said he had to get certain things
10 to complete it but he didn't say it wasn't effective
11 or you shouldn't sell lots.

12 MR. TAIKEFF: As I read his grand jury testimony
13 your Honor, when he got to that particular question on
14 several occasions he answered Mr. Reisel that Mr. Goldberg
15 must have known because the letter passed through
16 his office. Yet on direct in this case, he did testify
17 quite specifically that he had specifically told that to
18 Mr. Goldberg.

19 THE COURT: I will stand on the record in connec-
20 tion with this. I decline to make any further instruction
21 concerning Failla and his grand jury testimony.

22 MR. TAIKEFF: The second and last additional
23 request, your Honor, is for your Honor to instruct
24 the jury that it matters not whether the township was
25 authorized under the regulations of the DER to issue

1 mbrf 76

1320

2 permits in this subdivision; but it only matters whether
3 or not the defendants believed that the township was
4 so authorized, and if they do so believe, then their
5 representations to this effect were neither fraudulent nor
6 a misrepresentation.

7 THE COURT: I think I have fully charged scienter
8 here including reckless disregard.

9 MR. TAIKEFF: Those are the only additional
10 requests.

11 THE COURT: You may have an exception as to that.
12 Anything else?

13 MR. TAIKEFF: Yes, there are the exceptions
14 to your Honor's charge.

15 THE COURT: Anything you took before you don't
16 have to take again.

17 MR. TAIKEFF: I am not going to repeat except
18 on a topic which I addressed myself to before which
19 has a new wrinkle now. I might as well take that first;
20 and that is that just before your Honor charged the
21 jury, I asked whether your Honor was going to charge
22 the regulations in question, and your Honor said yes.
23 Your Honor then read the applicable portion of 73.11;
24 and then when your Honor got to 73.61A your Honor read
25 only the second sentence of a two-sentence regulation

1 mbrf 77

1321

2 and did not read the first sentence.

3 THE COURT: All right, you may have an exception
4 as to that.

5 MR. TAIKEFF: I also respectfully note that your
6 Honor's instruction immediately following the reading
7 of that second sentence as it pertains to that sentence
8 I take an exception to.

9 THE COURT: Yes, all right. Anything else?

10 MR. TAIKEFF: Yes, your Honor. I also except
11 to those instances where your Honor spoke of the fraudulent
12 scheme or the misrepresentations without preceding the
13 phrase or the word with the word alleged, which occurred
14 on several occasions; and I think it would be appropriate
15 for your Honor to tell the jury that if in any instance
16 you did that it was intended to the word alleged be there
17 and they should not think that your Honor came to a con-
18 clusion.

19 THE COURT: Really, I think the whole tenor of
20 my charge negates any suggestion that I came to a
21 conclusion. I really haven't. I decline to amplify it
22 in that regard. I think it is amply covered, the whole
23 charge has to be read as a whole and I think I made it
24 clear that I wasn't intruding in their function in the
25 slightest and I would never do so and I haven't here.

1 mbrf 78

2 All right.

3 MR. TAIKEFF: The Government's request to charge
4 contained an assertion that the defendant or the parties
5 which therefore includes the Department do not dispute
6 the fact that the alleged misrepresentations were material.
7 I objected to that before, your Honor --

8 THE COURT: Which number was that?

9 MR. TAIKEFF: I am afraid that I am not as
10 familiar with it as perhaps the Government is.

11 MR. SCHWARTZ: I don't know which number that
12 is. I did not bring it in. Shall we get it?

13 THE COURT: I'd like to know. Because the
14 statement made doesn't accord with my recollection of our
15 prior conference today.

16 MR. TAIKEFF: Which statement, your Honor?

17 THE COURT: That you had objected to anything
18 before as to materiality.

19 MR. SCHWARTZ: I don't recall it either.

20 THE COURT: I don't remember discussing it with
21 you at all.

22 MR. TAIKEFF: I can find it.

23 THE COURT: What number is it?

24 MR. TAIKEFF: I have to get the Government's
25 requests to answer.

1 mbrf 79

1323

2 MR. SCHWARTZ: We will get a copy, your Honor.

3 THE COURT: Bear in mind the jury is waiting.

4 Is there anything else we can work on while he is getting a
5 copy.

6 MR. TAIKEFF: Yes, we can. There is a similar
7 aspect.

8 THE COURT: No. 25. You seriously dispute that
9 the availability and cost of sewage in 10-B is not
10 material? In 10-B of the Property Report? I hadn't under-
11 stood you to dispute that at all. I thought your defense
12 was entirely based on the contention of truth or that the
13 misrepresentations if made were not knowing and wilfull.
14 If it was immaterial why would they put it in?

15 MR. TAIKEFF: Your Honor, at that point in his
16 charge was discussing the materiality with respect
17 from the purchaser's point of view.

18 THE COURT: I have it right here. It is page 2
19 of request 25 and I must say I have no note of any
20 comment on your part with respect to this during our Rule
21 30 conference, and you know your people wrote that statement
22 in the Property Report.

23 MR. TAIKEFF: Yes.

24 THE COURT: Who would put anything in there if
25 it wasn't material? How can you possibly say it is not

A 112
Charge of the Court

1324

1 mbrf 80

2 material? You really want me to tell this jury that you
3 think it is not material what the cost or availability of
4 sewage is?

5 MR. TAIKEFF: No, I believe that -- I am talking
6 about the portion of your Honor's charge where you were
7 talking about whether it was material to the purchaser's
8 decision to buy or not.

9 THE COURT: I have it right here, 25.

10 MR. TAIKEFF: And your Honor --

11 THE COURT: Do any of the rest of you remember
12 discussing this?

13 MR. SCHWARTZ: Your Honor, the only thing that
14 came up was at an earlier part in this paragraph but not
15 in terms of materiality. There was some comment about the
16 wording of the second sentence, I think.

17 THE COURT: I changed that from "may" to "must."

18 MR. SCHWARTZ: Materiality was not discussed.

19 THE COURT: I really must say --

20 MR. TAIKEFF: In any event, your Honor, I
21 do not take the position nor have I ever taken the
22 position on or off the record that --

23 THE COURT: You are not bound by anything you
24 did off the record; let's start right with that.

25 MR. TAIKEFF: But I don't want your Honor to

A 113
Charge of the Court

1 mbrf 81

1325

2 think I am going back on something I said informally.

3 THE COURT: I must say off the record discussions
4 are fully privileged with me. I am never going to cite
5 to you or anyone else anything that is discussed off
6 the record. We accomplished in some three hours what
7 would have taken us a day on the record; and I believe our
8 record is full and complete. All I am saying to you is that
9 in my Rule 30 conference with you on the record I really
10 don't recall this afternoon that you raised any issue
11 about that; I am staggered to think that you expect me
12 to go out and tell the jury disregard that statement
13 because the defendant now claims that there is a dispute
14 about the materiality of the statement contained in 10-B.

15 MR. TAIKEFF: That is not my position.

16 THE COURT: I am inclined to go ahead and do that
17 for you if you really want me to do it.

18 MR. TAIKEFF: That is not my position, your
19 Honor. My position is that the content of 10-B was not
20 necessarily material in any particular purchaser making
21 up his or her mind whether to buy.

22 THE COURT: I will go out and tell them that is
23 your contention. I will be glad to do it.

24 MR. TAIKEFF: Can I finish stating my other
25 contentions, your Honor?

1 mbrf 82

1326

2 THE COURT: Do you have more? Certainly.

3 MR. TAIKEFF: I believe that your Honor
4 instructed the jury that the mere use of the telephone
5 without qualifying whether it had to be an interstate
6 use of the telephone was required.

7 THE COURT: In the context of this case I think
8 it means interstate, but I don't know that it really
9 matters. I think you can make an intrastate call and still
10 have an instrumentality. That is like taking the
11 railroad to White Plains. You can still have an instru-
12 mentality.

13 MR. TAIKEFF: The Archer case seems to suggest
14 that you have to have an interstate call because the Second
15 Circuit criticized the agents for purposely going to New
16 Jersey so they would get an interstate call. Clearly
17 there were intrastate calls and that didn't give the --

18 THE COURT: Where were there intrastate calls
19 in this case?

20 MR. SCHWARTZ: There may have been, your
21 Honor, but this statute is closer to the Securities
22 Act where intrastate calls are --

23 THE COURT: All right, you have an exception
24 as to the failure to say interstate.

25 MR. TAIKEFF: I have just three other points,

1 mbrf 83

1327

2 your Honor. There was another statement that there is
3 no dispute as to the defendants' use of the telephone.
4 I assume that would come out in print as the plural
5 defendants' use of the telephone.

6 THE COURT: Not with me because I used that
7 in connection with a count that he isn't in, I think.

8 MR. TAIKEFF: In any event, the defense does
9 not concede that the defendant Goldberg ever used the
10 telephone.

11 THE COURT: I don't think I so stated to them.
12 There is no evidence to that effect.

13 MR. TAIKEFF: Your Honor, in reading the specific
14 count in the indictment which your Honor did read aloud,
15 qualified when your Honor got to 28, which is the
16 fourth in a series of counts which do not include Mr.
17 Goldberg, that is 16, 20, 26 and 28, when your Honor
18 got to 28, your Honor did read it in full, and then did
19 tell the jury that the word "defendant" in there was to be
20 treated as the corporation only.

21 However, your Honor did not say anything to
22 the jury with respect to 16, 20 and 26. I assume they
23 are going to get the verdict sheets so they can --

24 THE COURT: They will and furthermore, that
25 particular one is marked up, and that's what led me to

A 116
Charge of the Court

1 mbrf 84

1328

2 make that comment. It's marked up, and it would have
3 been misleading I think if I hadn't said it, in view of
4 the markings. I think they have been told that.

5 MR. TAIKEFF: If they have the verdict sheet
6 I think that will cure any problem in that.

7 THE COURT: Yes.

8 MR. TAIKEFF: The last point, your Honor, con-
9 cerns your Honor's statement that the Government relies
10 on, amongst other things, the alleged false statement
11 in the Statement of Record; and I don't think the
12 Government can rely upon even an alleged false statement
13 in the Statement of Record, there not being a charge here
14 that there was a false statement made in the Statement
15 of Record as such.

16 MR. SCHWARTZ: As part of the scheme?

17 MR. TAIKEFF: No one saw it except HUD and the
18 defendant.

19 MR. SCHWARTZ: But the defendants in furtherance
20 of their scheme submitted the --

21 MR. TAIKEFF: I think it should be clarified
22 in that respect.

23 THE COURT: I think I can say it is not asserted
24 that any of the purchasers saw the Statement of Record.

25 MR. TAIKEFF: That would be satisfactory, your

A 117
Charge of the Court

mbrf 85

1329

Honor.

THE COURT: Do you really want me to tell them that you dispute that materiality? Because I am willing to do it.

MR. TAIKEFF: I do not assert --

THE COURT: I am willing to correct that part of request 25 of the Government but I don't think -- my memory is you never raised it with me before and I really don't think you want me to, but if you say so --

MR. TAIKEFF: I don't know what your Honor is going to say.

THE COURT: How silly can you be? The issue of whether the availability of on-site septic tank systems is material. If you want the jury to decide that, I will tell them to.

MR. TAIKEFF: All right, in light of the posture in which it arises, I will withdraw the exception.

THE COURT: It's not my purpose to be unfair to your client in any respect in this charge; but I think on that particular point it is not a valid exception but if you want me to change it I will change it.

MR. TAIKEFF: I will let it stand the way it is.

THE COURT: All right.

1 mbrf 86

1330

2 (In open court, jury present.)

3 THE COURT: Members of the jury, I am sure you
4 realize that much of what I told to you was read from
5 the notebook which I have been working on during the
6 course of this trial, and of course some of it was not
7 read to you, but rather was amplified in the course of my
8 speaking just from the rough notes I have here.

9 It would be impossible under the circumstances
10 not to have at least one mistake; and I now want to
11 correct a misnomer or an error in description. You will
12 all remember that the Statement of Record is what is
13 filed with HUD and the Property Report is the printed
14 paper that is given to a purchaser; and at one point I
15 said that in connection with one or more of the so-called
16 alleged land sale fraud counts, that the Government
17 relied on a false statement in the Statement of Record.

18 Now, under the definitions which I have given
19 to you, and under the evidence in this case, there is no
20 evidence that these buyers who came in here and testified
21 in this case ever saw the Statement of Record and of
22 course they wouldn't, it's on file in Washington
23 and they are not required to see it, and therefore, not
24 having seen it, they couldn't have relied on it.

25 What I really meant to say was Property Report.

A 119
Charge of the Court

1 mbrf 87

1331

2 I meant to talk about the printed document in which
3 Paragraph 10-B refers to the sewage disposal and which
4 we mentioned so many times through the trial, and I
5 mi'sspoke myself when I referred to the other document.

6 Have I covered that agreeably to both sides?

7 MR. TAIKEFF: Yes, your Honor.

8 MR. SCHWARTZ: Yes, your Honor.

9 THE COURT: All right. Now, members of the jury,
10 you may withdraw to the jury room, and I think probably
11 the first thing you will want to take up is whether
12 you wish to stay down and have the U.S. Marshal take you to
13 dinner and then quit about quarter of 9:00, or whether you
14 would rather leave at about 7:00 and go directly home.

15 If you stay late, the marshal will provide
16 reasonable transportation. You don't have to take the
17 transportation, you are not in custody. I will see
18 you in any event before you leave but you may withdraw
19 to the jury room now and commence your deliberations.

20 6:05 p.m., jury retires to commence deliberations.)

21 (Court Exhibit 4 marked.)

22 THE COURT: While we are on the subject of
23 exhibits, I think you ought to leave with the clerk
24 those exhibits which may be furnished to the jury in response
25 to its request, if it makes any. If there is any

1 mbrf 88

1332

2 difficulty as to any of them, I think we ought to address
3 ourselves to it, and if you are willing to stipulate
4 at that time the clerk may respond to any such note, assuming
5 the note is simple, I will do so.

6 If they ask a question which is ambiguous,
7 I will have to go back on the record and call you both
8 in here.

9 MR. TAIKEFF: I would consent. I would trust
10 that the clerk would be authorized to tell us that
11 the note has come in and as to its content.

12 THE COURT: Certainly. But may he comply with
13 it assuming it is simple, and merely requests exhibits
14 by simple identification?

15 MR. SCHWARTZ: That is agreeable.

16 MR. TAIKEFF: Yes.

17 THE COURT: If they ask something that is
18 doubtful, I will of course contact you or Mr. Holtzman
19 and contact you or Mr. Schwartz.

20 MR. TAIKEFF: Would your Honor authorize the
21 clerk in the event your Honor is in chambers if a note
22 comes in which appears to be resolvable between counsel,
23 to take it up with counsel?

24 THE COURT: Certainly.

25 MR. TAIKEFF: Thank you, your Honor.

1 mbrf 89

1333

2 (7:00 p.m., in open court.)

3 THE COURT: I think we will break for the night.
4 I plan to have them come back at 9:30.

5 MR. SCHWARTZ: I will keep custody of the
6 exhibits overnight. I think that is the simplest way
7 to do it.

8 THE COURT: Very well.

9 (Jury present.)

10 (7:00 p.m.)

11 THE COURT: Members of the jury, the marshal
12 has apprised me that the forelady indicates that you would
13 like to break for the day, and resume your labors tomorrow.
14 Accordingly I am going to excuse you for the evening
15 and ask you to return to the jury room at 9:30 tomorrow
16 morning. Now do not commence discussion of the case
17 until all 12 are in the jury room. Please try to be
18 prompt because you are not going to be waiting for
19 anybody but yourselves once you are all there you can
20 start.

21 You won't hear from me unless you send out a
22 note that you need anything or want something.

23 Now, I want to make a few more points again.
24 Do not discuss the case with anyone else other than
25 a jury member when all of the jury are present, and in

1 mbrf 90

1334

2 the jury room. Do not read anything about the case or
3 about the general subject matter of the case that might
4 affect your thinking, or speak to any of the people
5 or visit any of the places or do anything which would
6 affect your openmindedness. It's absolutely necessary
7 that all 12 of you be here tomorrow on time and ready
8 for duty because from hence forward once the deliberations
9 have started we don't have our alternates any more
10 and I am counting on your reliability because we have
11 taken almost two weeks with this case, and if I had to
12 declare a mistrial because of unavailability of somebody,
13 I'd be very disappointed and if anyone wilfully caused such
14 a circumstance, it might constitute a contempt of court.

15 So please be certain that you are here on time
16 tomorrow and that you don't do anything or read anything
17 or have anything happen which will affect your ability
18 to give a fair and impartial verdict.

19 All right, you are excused for the evening,
20 thank you all.

21 (7:00 p.m., adjourned to June 14, 1974 at
22 9:30 a.m.)
23
24
25

MINUTES OF SENTENCE

1 jb-1

2 UNITED STATES OF AMERICA

3 v

73 Cr 630

4 POCONO INTERNATIONAL and
5 CHARLES GOLDBERG

6 May 19, 1975

7 Before: HON. CHARLES L. BRIEANT, JR.,

8 District Judge.

9 Appearances:

10 Anne Sidamon-Eristoff, Esq.,
11 Bart Schwartz, Esq.,
Assistant United States Attorneys

12 Elliot A. Taikeff, Esq.,
13 Graham Hughes, Esq.,
for the defendants.

14 - - - - -
15 (Case called - both sides ready.)

16 THE COURT: Mr. Taikeff, is there any reason why
17 sentence should not be imposed at this time?

18 MR. TAIKEFF: There is none, your Honor.

19 THE COURT: Mr. Goldberg, is there any reason
20 why sentence should not be imposed at this time with respect
21 to both defendants?

22 MR. GOLDBERG: No, your Honor.

23 THE COURT: Mr. Taikeff, I have your sentencing
24 memorandum, which I have read with care and I understand
25 you have seen the presentence report and is there anything
you wish to say further or do you wish to present any

1 jb-2

2 information in mitigation of sentence?

3 MR. TAIKEFF: Yes, your Honor. I would address
4 myself to a few topics. I would ask most respectfully of
5 your Honor that if there is something which has come to your
6 Honor's attention either through the presentence report
7 process or which was touched upon in my sentencing
8 memorandum that your Honor believes counsel should pay
9 particular attention to, to perhaps answer any questions
10 that may be on your Honor's mind, will straighten out any
11 disputed fact or apparent disputed fact, I would be privi-
12 leged to be advised by your Honor what I might address
13 myself to.

14 THE COURT: I will hear you first and if there is
15 any problem which I want further information about, I will
16 ask at that time.

17 MR. TAIKEFF: Then the first point I would like to
18 make or the first topic I would address myself to is a
19 technical one but it goes directly to the sentencing process
20 and that is the question of whether certain counts should
21 be merged for the purpose of the imposition of the judgment
22 in this case.

23 THE COURT: I am inclined to think they should be
24 at least as to the corporation. I am inclined to take the
25 view that they ought to be treated together in as far as

A 125
Minutes of Sentence

1 jb-3

2 they involved a particular purchaser.

3 MR. TAIKEFF: I would be perfectly pleased to
4 await perhaps another time if there are some more technical
5 questions that may arise because your Honor always has the
6 power under Rule 35 to make any adjustments.

7 THE COURT: I would rather hear you completely now.
8 You have an obligation to your clients and to the Court
9 to deal with all your matters now and not come around to
10 some thought later on on a Rule 35 motion. I would prefer
11 you not do that.

12 The Court understands that three of the counts
13 relate to one person; the same is true of another purchaser;
14 another purchaser had two counts and one had three; another
15 had two; another three; another three and Jordan, who is
16 in Count 16, he only had one count concerning his matters.

17 The Court recognizes there is some factual inter-
18 change between the three separate crimes charged in the
19 three separate counts in that they all grow out of the
20 dealings with the single purchaser. The Court understands
21 that much, if that is what you have reference to.

22 MR. TAIKEFF: I was going to approach it from a
23 different angle, your Honor, and that is to respectfully
24 suggest to your Honor that the sales, all of them for
25 each defendant, of unregistered land, constitute a single

1 jb-4

2 course of conduct, that in imposing judgment under the mail
3 fraud statute, it is clear that each mailing constitutes
4 a separate offense and there is no merger there into a
5 single course of conduct.

6 THE COURT: There is no merger on any of the
7 counts, Mr. Taikeff. The only question is whether the
8 Court, in the interests of justice, may treat them jointly
9 for purposes of sentence.

10 MR. TAIKEFF: That is what I was addressing myself
11 to, only the question of sentence, not merger for purposes
12 of entry of judgment but only for the question of what is
13 the sentence to be imposed.

14 I was suggesting to your Honor that the selling
15 process was of such anature and the prohibition in the
16 statute is defined in such a way that the selling program
17 going on during the period when there was not an approval
18 of the registration statement constituted a single course
19 of conduct.

20 Judge Motley has recently held --

21 THE COURT: No. Just tell me about this case. I
22 don't care what Judge Motley held in some other case.
23 Tell me about this case.

24 MR. TAIKEFF: In this particular case, that is the
25 point I wanted to make to your Honor concerning the sale of

1 jb-5

2 unregistered land. Although there are six counts with
3 which the Court has to deal, they may appropriately, for
4 sentencing purposes, be viewed as one course of conduct which
5 violated the law. That was the point I wished to make.

6 THE COURT: All right.

7 MR. TAIKEFF: I will not address myself to the
8 many facts out of the defendant's life, which undoubtedly
9 your Honor is fully aware of. I think they are of
10 significance in terms of the sentence which will be imposed
11 upon him.

12 It is quite clear and not necessary to go over
13 that.

14 I would like to inform your Honor of something
15 which does not appear in the presentence report and something
16 which I am aware from my contact with the defendant and
17 his family and that is that more than the impact that one
18 expects upon an individual or his family because of an in-
19 dictment has occurred in this particular case.

20 There have been great strains and stresses placed
21 upon the family and a great deal of personal anguish
22 and pain has been experienced over the last year and I
23 would ask your Honor to take that into consideration in
24 deciding what the sentence should be in this particular
25 case.

1 jb:mg 6

2 I have indicated to your Honor in the sentencing
3 memorandum the extent of the financial loss which has been
4 suffered both by the corporate defendant and the individual
5 defendant and I would in addition to that respectfully call
6 your Honor's attention to the fact that the ability of the
7 individual defendant to earn his living in this field in
8 which he has been working for many years and in which all
9 of his expertise is, has been and will be substantially
10 affected by this experience so that there will be a contin-
11 uing impact on him in a financial sense primarily, but never-
12 theless, it will continue for a long time into the future.

13 There is one other important factor that I would
14 like to call to your Honor's attention and that is that
15 there are two people in the family who do not yet know that
16 this sentencing is taking place and that is the defendant's
17 father, whom your Honor has read about in the presentence
18 report, and his mother-in-law, both of whom are dependent
19 upon him.

20 The father is 82 and the mother-in-law is 75.

21 Because of the strain which has occurred on the
22 family level and because there was a time when it was be-
23 lieved he was going to be sentenced and then for technical
24 and other reasons he was not sentenced, Mr. Goldberg did not
25 tell his wife that the sentencing was taking place today

1 jb:mg 7

2 until yesterday when he was fairly certain that in fact it
3 was going to take place, but he has not yet told his father
4 and his mother-in-law.

5 That, your Honor, is not because he is concealing
6 his problems from the people around him. In fact, in order
7 to obtain the letters of personal recommendation and business
8 recommendation, he had to tell many people who did not know
9 of the nature of his personal problem and that, of course,
10 was a very painful process, but he did so.

11 He did not tell his father and his mother-in-law
12 because they are very old, they are sick, and if there
13 should be, in your Honor's opinion, a sentence of jail time
14 here, it will have a very serious and long-ranging impact
15 on these people, and he is hopeful that your Honor will rec-
16 ognize that the other factors in this case mitigate against
17 his being sent to jail and that perhaps when it is over, the
18 older people can then be told of the circumstances of the
19 situation.

20 There is one other point which I perhaps will have
21 to defer at this time because I understand from a conversa-
22 tion with Mr. Schwartz this morning something that he wishes
23 to advise your Honor of and to the extent that it may be
24 appropriate for me to say something on that subject, I hope
25 your Honor will allow me to reserve a few moments.

1 jb:mg 8

2 The last point to which I address myself is in
3 support of the position which I have enunciated in my sen-
4 tencing memorandum which I repeat here, and that is that
5 there is no need and on the facts and circumstances of
6 this case, no justification of sending Mr. Goldberg to jail,
7 and in that regard, there are two observations I would like
8 to make.

9 The first is that the adjudication of guilt or
10 innocence has already taken place and that of course is
11 no longer in issue at this particular time, but the ques-
12 tion of where, in the range of the punishment your Honor's
13 judgment should lie, is of course precisely the function
14 which is being scrutinized today.

15 I respectfully submit to your Honor that assuming,
16 as we must at this particular juncture, that Mr. Goldberg's
17 conduct and/or the corporation's conduct - but of course I
18 am addressing myself to Mr. Goldberg's conduct-- assuming that
19 it constitutes without question a violation of the law, the
20 question then is how severe a violation was it, what were his
21 motivations, how evil was his conduct in terms of his own
22 conscious thinking process, which I think perhaps is the
23 most important factor in determining what his punishment
24 should be.

25 Now, with respect to the fraud and without

1 jb:mg 9

2 rearquing anything which has been previously argued before
3 your Honor, if the property report or let us assume that the
4 property report was such that it constituted a fraudulent
5 statement because it was at odds with the facts or the tech-
6 nical facts-- that is to say your Honor, I am sure, will
7 recall that at the end of the government's case, your Honor
8 observed, and I am not attempting to quote your Honor, that
9 there cannot be a fraud here unless there is some basis in
10 the DER regulations.

11 It was necessary to analyze the regulations be-
12 fore it was possible to say that there even was a fraud in
13 a technical sense to get past the point where it would be
14 appropriate for the case to go to the jury.

15 We can assume at this time without any further
16 discussion that there was a fraud in that sense.

17 Now, the question is, what has been the conse-
18 quence of that fraudulent conduct and what are, realisti-
19 cally speaking, the as yet unreported future consequences,
20 and I think, your Honor, that the information which was
21 brought to your Honor's attention in the course of the last
22 set of motions which were made by the defense cindicate that
23 although the defendant may have not written a property
24 report or distributed a property report that contained all
25 of the warnings and all of the possibilities that perhaps

Minutes of Sentence

1 | jb:mg 10

2 | it should have, that the underlying facts were such that
3 | there was no, and there is no danger at this time that
4 | any reliance upon those statements would cause anybody
5 | difficulty, financial or otherwise.

6 | Perhaps technically he should have said you can't
7 | get every kind of permit that may be required here from the
8 | township. You might be turned down by the township and you
9 | will have to go to the state.

10 | However, we now have a clear demonstration from
11 | the township's new sanitarians, who were trained and super-
12 | vised--

13 | THE COURT: Please, Mr. Taikeff. No more about
14 | the township's new sanitarians. I have had all that and
15 | been through it all with great care and consideration.

16 | I just don't want to hear any more about it.

17 | Your man stands convicted here by a jury verdict.
18 | Every possible post-trial motion that could be made has
19 | been fully and fairly considered by the Court. We are
20 | here today to impose sentence on him and this corporation.
21 | Let's get to them. Let's not talk about the DERS.

22 | MR. TAIKEFF: But, your Honor, whether or not
23 | there is any potential for harm to the public or limited
24 | segment of the public now or in the future as a result of
25 | the conduct of the defendant I think is a very important

1 jb:mg 11

2 issue in your Honor's consideration as to what sentence
3 to impose.

4 That's why I was addressing myself to it because
5 it has been established that everybody who has applied for
6 a permit except one person, I think, to date, has gotten
7 the permit for a system no more complex than the basic
8 standard system with, in some instances, perhaps a third of
9 the instances, the necessity of an additional filter area
10 called the turkey mount so that nobody has bought a piece
11 of land which is not usable for residential purposes or
12 recreational purposes.

13 That is why I am addressing myself to that particu-
14 lar point, your Honor.

15 Now, with respect to the remaining violations,
16 the remaining counts, they all deal with the Interstate
17 Land Sales Full Disclosure Act and the failure to do cer-
18 tain things which are required by that act, and the punish-
19 ment can be severe.

20 Now the fact that the defendants violated those
21 statutes is not being disputed but what is, I think, impor-
22 tant in your Honor's determination as to the correct sentence
23 in this case, is to note that HUD, which is empowered by
24 law to enforce that statute, at least according to a recent
25 newspaper account in one instance, and according to

1 jb:mg 12

2 Mr. Bernstein some years back, and according to a person, I
3 believe his name is Adams, in the enforcement unit right
4 now, HUD doesn't take this statute as seriously as some
5 might suppose they should.

6 THE COURT: I am not interested in that argument.
7 The prosecutorial discretion is vested in the United States
8 Attorney. There is no point for me to say that to the
9 United States Attorney that there may be other criminals
10 lurking in the district whose statutes or condition is
11 worse. I don't want to hear about HUD's failure to enforce
12 the statute. That is a problem which exists throughout
13 the country in all kinds of departments of the government.

14 Now, please, Mr. Taikeff, won't you come to the
15 point here?

16 MR. TAIKEFF: The point is with respect to that,
17 your Honor, that Mr. Goldberg's conduct was far ahead of
18 everybody else in the industry; that he went to great ex-
19 pense and was meticulous about filing with three different
20 governmental agencies, including HUD, that he did so in an
21 effort to comply with the law and that to the extent that he
22 may have crossed the line and failed to comply with the law,
23 was, compared to the others in his own industry, an indica-
24 tion that he was a law-abiding citizen who tried very hard to
25 comply with all the technical requirements of the law.

1 jb:mq 13

2 He had already successfully in this very same
3 development filed for and got even approval from HUD, New
4 York, and New Jersey, for four other sections.

5 I am not saying that if he fails to have an ap-
6 proved registration statement when he sells, he is not
7 guilty, but I think that the sentence which is imposed
8 should take that comparative set of facts into consideration.

9 Thank you.

10 THE COURT: Mr. Goldberg, you may present any
11 information in your own behalf or in behalf of the corporation
12 in mitigation of sentence and you may be heard in your own
13 behalf or in behalf of the corporation if you wish.

14 THE DEFENDANT: I believe that my attorney has
15 covered all the points, your Honor.

16 THE COURT: Does the government have any comments?

17 MR. SCHWARTZ: Yes, your Honor. I would like to
18 be heard briefly.

19 As I understand Mr. Taikeff's arguments, he does
20 admit that his client stands here today convicted of filing
21 false papers with HUD and making misstatements to purchasers,
22 either individually or through the corporation.

23 At the same time, he says to the Court that
24 Mr. Goldberg should be given credit for filing these false
25 documents.

1 jb:mg 14

2 The fact that Mr. Goldberg did file-

3 THE COURT: I don't think he meant to say that in
4 that fashion, Mr. Schwartz.

5 Tell me about what cooperation occurred here. And
6 when did it begin? When did it begin?

7 MR. SCHWARTZ: Your Honor, that was the next point.

8 If I may, your Honor, the cooperation began after
9 the conviction in this case or after the jury verdict, but
10 there is something which I should bring to the Court's at-
11 tention on this, and I did discuss it with Mr. Taikeff.

12 He is aware of it and I think that's why he asked
13 the Court for additional time if he wished to respond to
14 it.

15 I sent a letter to the Court, I believe dated
16 December 9, 1974, outlining certain information with respect
17 to Mr. Goldberg's cooperation.

18 Recently I've come into possession of some infor-
19 mation which seems to show that Mr. Goldberg's cooperation
20 has been less than candid and straightforward.

21 In fact--

22 THE COURT: Well, it all happened after the
23 verdict, isn't that right?

24 MR. SCHWARTZ: That is correct, your Honor. In
25 fact, that information seems to show, if true, that

1 jb:mg 15

2 Mr. Goldberg and others were more active in making misrep-
3 resentations to the public than Mr. Goldberg himself is
4 willing to admit.

5 As I said, I advised Mr. Taikeff of this recent
6 information and he is aware of the fact that I was going
7 to make the statement today, limiting the December 9th
8 letter in that I cannot in good faith say to this Court at
9 this time that Mr. Goldberg has cooperated fully and com-
10 pletely and candidly.

11 THE COURT: Well, you see, the cooperation here
12 is not entitled to the same weight with me as it would have
13 had if it had been made prior to the verdict.

14 It is entitled to some consideration and it is
15 always difficult to consider whether he was cooperating in
16 good faith and fully. You see, cooperation after the
17 verdict is not really based on any feeling of contrition
18 where, if a fellow begins to cooperate reasonably soon
19 after he is apprehended in criminal activity, it may show a
20 turn of mind which is entitled to a little more.

21 The Court has no way of weighing the value of this
22 cooperation without some hearing but I don't really consider
23 it a matter to be deserving of very great weight under the
24 circumstances in view of the timing of it.

25 MR. TAIKEFF: Your Honor, may I be heard briefly?

1 jb:mg 16

2 THE COURT: Is there some clarification as to where
3 you think he was incredible or what the motivation was of
4 being incredible? I would be happy to know that.

5 I have your December 9th letter and my inclination
6 is, having heard nothing in advance today, to take that let-
7 ter at face value, Mr. Schwartz.

8 You should have come in earlier and told me you
9 were withdrawing the December 9th letter.

10 MR. SCHWARTZ: Your Honor, I had hoped that we
11 could follow through on the information that we had, so that
12 we could advise the Court today with more certainty as to
13 whether that letter was accurate or not.

14 THE COURT: It seems to me you have had plenty
15 of time. The sentencing has been adjourned in order to
16 deal with complex and comprehensive motions which have been
17 made here. You have had quite a bit of time since December.
18 You should have written the Court that you were withdrawing
19 the letter, with a copy to Mr. Taikeff.

20 MR. SCHWARTZ: The information did not come to
21 the United States Attorney's Office in December. It was not
22 until some time in March that the new information to my
23 attention which revealed that the cooperation may not be
24 complete.

25 THE COURT: I don't know how you justify the time

1 jb:mg 17

2 elapsed between March and today.

3 MR. SCHWARTZ: Well, your Honor, as your Honor knows,
4 it is difficult to investigate matters and we can't always
5 do it as quickly as we would like to.

6 THE COURT: All right.

7 MR. TAIKEFF: Could I address myself briefly to
8 two points concerning that topic, your Honor?

9 THE COURT: If there are two points.

10 MR. TAIKEFF: I believe there are.

11 As to Mr. Goldberg offering the cooperation which
12 he offered after the verdict, the government asked, after
13 the verdict, whether he would be willing to come in and tell
14 whatever he knew about interstate land sales in that area or
15 anything that he had any contact with, and he said, "Yes,"
16 and from that time on, he brought in documents, he brought
17 in information, he testified several times before a grand
18 jury.

19 He wasn't asked previously so he couldn't have said
20 yes previously.

21 THE COURT: He knew he was indicted and charged
22 with a number of serious counts and he knew that he had two
23 choices and one of his choices was if he came in and took
24 the side of the government and showed his willingness to
25 point out others who you say are worse, I would be inclined

1 jb:mg 18

2 to believe there must be others that are worse. There
3 usually are in any criminal matter.

4 MR. TAIKEFF: But the time to do that is not
5 before a man has his trial on the merits.

6 THE COURT: All right. I am not going to pay any
7 attention to Mr. Schwartz' contentions and I am going to fig-
8 ure him as a cooperator, but a late cooperator.

9 He is entitled to some credit for that.

10 MR. TAIKEFF: If your Honor is going to do that,
11 I won't make any reference.

12 THE COURT: No. I am not going to hold a hearing.
13 I could have been informed in March and I wasn't.

14 I want to instruct you, Mr. Goldberg, both
15 individually and with respect to the corporate defendant,
16 that you have an absolute right of appeal. You do and the
17 corporation does.

18 The judgment of conviction is being imposed today
19 and it is a final judgment. And if you are indigent, which
20 you don't appear to be from the presentence report, the
21 Court will appoint an attorney to represent you as an
22 indigent person on appeal.

23 Do you understand your right and the corporation's
24 right of appeal?

25 THE DEFENDANT: Yes, sir.

A 141
Minutes of Sentence

1 jb:mg 19

2 THE COURT: Are you prepared to continue to rep-
3 resent him on the appeal, Mr. Taikeff?

4 MR. TAIKEFF: Yes, your Honor. I think that
5 Mr. Hughes will probably do--

6 THE COURT: There is no contention that he is
7 insolvent?

8 MR. TAIKEFF: No, your Honor.

9 THE COURT: Now, with respect to the corporate
10 defendant, I will treat the corporate defendant's activity
11 as separately with respect to each purchaser and the cor-
12 poration is fined \$1000 on count 2, \$5000 on count 18 and \$5000
13 on count 19, and these fines will be non-cumulative.

14 Those three counts may be satisfied by paying
15 a total of \$5000.

16 I'll impose a fine of \$1000 on count 7. \$5000
17 on count 26 and \$50000 on count 27.

18 Those three counts will be non-cumulative with
19 respect to each other and may be satisfied by paying a
20 total sum of \$5000 but that sum will be cumulative as to the
21 counts 2, 18 and 19 just mentioned.

22 The latter one is DiMcgllo.

23 With respect to Batch, which is counts 8 and 41,
24 the defendant corporation is fined \$1000 on count 8 and
25 \$5000 on count 41, which are non-cumulative and may be

1 jb:mg 20

2 satisfied by paying a total fine of \$5000, but this amount
3 is cumulative with respect to the prior counts.

4 With respect to Arella, the corporation is fined
5 \$1000 on count 4, \$5000 on count 20 and \$5000 on count 21,
6 non-cumulative as to these three counts, but cumulative as
7 to all others.

8 With respect to Hava, which was count 9, the
9 defendant corporation is fined \$1000 and count 29, \$5000,
10 non-cumulative, which may be satisfied by paying \$5000,
11 cumulative to all prior counts mentioned.

12 As to Cancro, fined \$1000 on count 11, \$5000 on
13 count 30 and \$5000 on count 31. Here again, these are
14 non-cumulative and may be satisfied by paying the additional
15 sum of \$5000.

16 As to Perri, the corporation is fined \$1000 on
17 count 12, \$5000 on count 32 and \$5000 on count 33. Again,
18 non-cumulative as to Perri, and may be satisfied by paying
19 \$5000 total.

20 On count 16, which is Jordan, the corporation is
21 fined \$2500. This makes a total fine of \$37,500, assuming
22 that all of the counts are affirmed.

23 I am going to direct that the corporation pay
24 that in 45 days unless there is some other arrangements which
25 you want to make with respect to it.

1 jb:mg 21

2 That's a total sum of \$37,500.

3 Now with respect to the individual defendant,
4 Mr. Goldberg, the Court has the presentence report and the
5 sentencing memorandum and a very substantial number of let-
6 ters and the letters portray the defendant as a person highly
7 regarded in his community, highly regarded in business and
8 respected by those who know him.

9 The Court also finds that this defendant was
10 found guilty of a federal crime in the nature of false
11 statements or fraud in the Eastern District of Pennsylvania
12 in 1960 on two separate charges as to which he was sentenced
13 on the same day and fined and placed on probation so that
14 the Court does have a prior record of a prior situation of
15 a federal crime involving this defendant in connection with
16 a government insured loan or group of loans, more specifically
17 mentioned in the presentence report which, I understand, you
18 have all read.

19 Now, this Court would not be disturbed with respect
20 to most of these counts having to do with the turkey mount
21 or the question of the property report and its wording.
22 Taken alone, I would not consider that this defendant was
23 a proper subject for a prison sentence in spite of his prior
24 record but having regard to his favorable standing in the
25 community.

1 jb:mg 22

2 However, certain of these counts, particularly
3 the counts of selling this unregistered land, do present
4 a brazen violation of the legal requirements to register
5 land for sale before dealing in it and these particular
6 counts in the indictment cause the greatest problem or dif-
7 ficulty for the Court; on these particular counts I must
8 reach the conclusion that your conduct is inexcusable and
9 totally wilful and motivated by greed, by a desire to get
10 a hold of these purchasers in a hurry and get their money
11 and effectuate the sale to them without complying with the
12 statute requiring the filing with the Housing and Urban
13 Development, otherwise known as HUD, and it is particularly
14 grievous in the case of Jordan in count 16 where the sale
15 contract was on June 4, 1972; he had been in communication
16 with the defendant in May of 1972, and the deed itself was
17 dated July 18, 1972, which was the same date that the
18 statement record had been filed.

19 As to those counts, 16, 18, 20, 26, 30 and 32, the
20 defendant is sentenced to 18 months term of imprisonment on
21 each of those counts to run concurrently.

22 With respect to each of the other counts of which
23 you stand convicted, imposition of sentence is suspended
24 and the defendant is placed on probation for a term of four
25 years concurrent with each other and concurrently with the

A 145
Minutes of Sentence

1 jb:mg 23

2 sentence previously imposed.

3 Pursuant to the standing probation conditions of
4 this Court and also the following two special conditions of
5 probation:

6 First, the defendant is to use his best efforts
7 to cause the co-defendant to pay the fines imposed and,
8 second, the defendant shall not engage directly or indirectly
9 in the sale of land in interstate commerce nor as a fudi-
10 ciary or corporate officer or director without permission of
11 his probation officer first obtained and I will say with
12 respect to that, it is not my intention to keep him out of
13 business but I trust that the officer will use judgment and
14 discretion and not permit him to be engaged in interstate
15 land sales unless he is working for and with a person who
16 will make sure that all statutory obligations are properly
17 discharged, and that there is no further trouble that he
18 can get into.

19 Now, I will stay the penal sentence pending appeal
20 if there is an application to that effect.

21 MR. TAIKEFF: There is such an application, your
22 Honor. At the same time, may I ask your Honor to stay
23 the payment of the corporate fine pending appeal?

24 THE COURT: I am reluctant to do that, Mr. Taikeff.
25 If there is a possibility of protecting the interests of

1 jb:mq 24

2 the government with respect to the fine by means other than
3 paying it, if there is some government collateral or something
4 like that that you can deposit with the clerk, I will let
5 you do that because I would say that you would have no
6 problem getting it back and it seems to me that the funds
7 have been draining away from this corporation and there is
8 a possibility apparently to me from everything I've heard
9 before me that other persons have a real, assert real or
10 fancy claims against this corporation and the important
11 thing is that the government get paid and not wait for a
12 year and a half or two years while the appellate procedures
13 exhaust themselves.

14 So I am going to ask you to pay that within a
15 reasonable time. If 45 days is too short a time, I'll
16 consider enlarging it but I must insist that it be paid and
17 if you don't want to pay it, you may deposit Treasury bills
18 or something of that sort in lieu of payment, and I'll sign
19 a consent order on that subject, if you sit down with the
20 gover-ment and try to agree on one.

21 MR. TAIKEFF: Yes, your Honor.

22 THE COURT: The defendant is continued on his
23 existing bail pending appeal.

24 The Court will take a brief recess.

25 (Recess)

JUDGMENT AND COMMITMENT ORDER
CHARLES GOLDBERG

United States District Court for

United States of America vs.

DEFENDANT

CHARLES GOLDBERG

Southern District of New York

DOCKET NO. ➤ 73 Cr. 630 CLB

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date ➤

MONTH	DAY	YEAR
5	19	'75

COUNSEL

☐ WITHOUT COUNSEL

However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Elliot A. Talkoff

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTYThere being a ~~verdict~~ verdict of☐ NOT GUILTY. Defendant is discharged☒ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of using the mails in a scheme and artifice to defraud. [Title 18, U.S. Code, §1341.]; violation of the Interstate Land Sales Act. [Title 15, U.S. Code, §§1703(a)(1) and 1703(a)(2); Title 18, U.S. Code, §2]

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SIXTEEN (16) MONTHS on each of counts 16, 18, 20, 26, 30 and 32,
to run concurrently with each other.

SENTENCE
OR
PROBATION
ORDER

Imposition of sentence on counts 2,4,7,8,9,11,12,19,21,27,29,31,33,
and 41 is suspended. Defendant is placed on probation for a period
of FOUR (4) YEARS, to commence upon expiration of confinement, and
subject to the standing probation order of this Court.

SPECIAL
CONDITIONS
OF
PROBATION

Special conditions of probation being that the defendant use his best
efforts to cause the co-defendant to pay the fines; and defendant shall
not engage directly or indirectly in sale of land in interstate commerce
nor as a fiduciary or corporate officer or directly without permission
of Probation Officer first obtained.

Defendant continued on own recognizance pending appeal.

A 148

Judgment and Commitment Order
Charles Goldberg

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

Charles L. Bricant

~~CHAR~~ Charles L. Bricant, Jr. May 19, 1975

CERTIFIED AS A TRUE COPY ON

THIS DATE

5/19/75

BY

[Signature]

() CLERK

(X) DEPUTY

JUDGMENT AND COMMITMENT ORDER
POCONO INTERNATIONAL CORPORATION

United States District Court

United States of America vs.

POCONO INTERNATIONAL

Southern District of New York

DEFENDANT

CORPORATION

DOCKET NO. 73 Cr. 630 CLB

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
5	19	'75

Charles Goldberg, president of Corp. present in Court.

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Elliot A. Taikoff

(Name of counsel)

PLEA:

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of

using the mails in a scheme
and artifice to defraud. [Title 18, U.S. Code, §1341.]; violation
of the Interstate Land Sales Act. [Title 15, U.S. Code, §§1703(a)(1)
and 1703(a)(2); Title 18, U.S. Code, §2.]

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of .

Defendant is FINED \$1,000 on ct. 2, \$5,000 on cts. 18 & 19-non cumulative to each other ~~by~~ but cumulative to remaining cts.; \$1,000 on ct. 7, \$5,000 on cts. 26 & 27-non cumulative to each other ~~by~~ but cumulative to the prior cts.; \$1,000 on ct. 8, \$5,000 on ct. 41-non cumulative to each other but cumulative to the prior cts.; \$1,000 on ct. 4, \$5,000 on cts. 20 & 21-non cumulative to each other but cumulative to the prior cts.; \$1,000 on ct. 9, \$5,000 on ct. 29-non cumulative to each other but cumulative to prior cts.; \$1,000 on ct. 11, \$5,000 on cts. 30 & 31-non cumulative to each other ~~by~~ but cumulative to prior cts.; \$3,000 on ct. 12, \$5,000 on cts. 32 & 33-non cumulative to each other but cumulative to the prior cts.; \$2,5000 on ct. 16, cumulative.

TOTAL CUMULATIVE FINE of \$37,50000 is to be paid within 45 days.

SENTENCE
OR
PROBATION
ORDERSPECIAL
CONDITIONS
OF
PROBATION

A 150

Judgment and Commitment Order
Pocono International Corporation

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

SIGNED BY

☒

☐ U.S. Magistrate

Charles L. Priocent, Jr.

Charles L. Priocent, Jr.

BY

CLERK

A 151

GOVERNMENT'S EXHIBIT 4A

LETTER DATED MAY 4, 1971

475
-71)
GOVERNMENT'S
EXHIBIT *D*
U. S. DIST. COURT
S. D. OF N. Y.

4 A 151
ASSOCIATES, INC. P.O. BOX 534 HAZLETON, PA. 18201 717-455-7156

CONSULTING ENGINEERS • SURVEYORS • DESIGNERS • PLANNERS

FPI MI-4 8-74 30M 2001

May 4, 1971

Pocono International Corporation
Penn Forest Township
Carbon County, Pennsylvania

Dear Sirs,

My investigation of the soils appearing at Hickory Run Forests, Carbon County, Pennsylvania, and percolation tests conducted by me at various locations over the 820 acre tract indicates the following relative to sub-surface disposal of sewage effluent:

Percolation tests show a rate of fall in minutes per inch from 15 minutes per inch to 55 minutes per inch.

1. U. S. Department of Agriculture, Soil Conservation Service, Soil Survey, Carbon County Pennsylvania, Dated November, 1962.
2. Commonwealth of Pennsylvania, Department of Environmental Resources, Standards for Design and Construction of Sepsic Tanks and Tile Fields.

Based upon review of the above sources and field investigation, it is my opinion that on-site sewage disposal systems are practical and feasible, provided the procedures standards are strictly adhered to. These standards include aerated tanks and subsurface sand filter beds where necessary. The estimated cost of such system for each lot, under average conditions, would be \$900.00 to \$1,200.00.

Very truly yours,

Joseph Michel

Joseph Michel, P.E.

JM/rpc

A 152

GOVERNMENT'S EXHIBIT 4B

LETTER DATED APRIL 27, 1971

USA 334-476
(ED. 4-23-71)

GOVERNMENT'S
EXHIBIT ~~10~~
U. S. DIST. COURT
S. D. OF N. Y.

4B

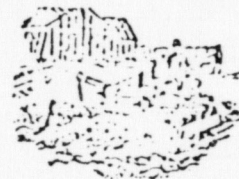
FPI MI 4 8-74 30M 2001

H. Zimmerman

EXCAVATING

215 SOUTH THIRD STREET
HIGHTON, PENNSYLVANIA 18235

TELEPHONE 215-377-1770



April 27, 1971

TO: Pocono International Corporation
927 Huntingdon Pike, Huntingdon Valley, Pa.

ATTN: Mr. Edward Leventhal

RE: Hickory Run Forest

The estimated average cost of installing a septic tank
in your subdivision of Hickory Run Forest will be approximately
\$600.00.

A 153

GOVERNMENT'S EXHIBIT 4C

LETTER DATED MAY 3, 1971

SA 874-173
D. 4-23-71)

GOVERNMENT'S

EXHIBIT *4C*

U. S. DIST. COURT

S. D. OF N. Y.

4 C

PENN-FOREST TOWNSHIP

SUPERVISORS

CARBON COUNTY, PENNSYLVANIA

May 3, 1971

Pocono International, Inc.
927 Huntingdon Pike
Huntingdon Valley, Penna. 10006

Gentlemen:

This is to advise you that use of septic tanks and other on lot sewage disposal facilities will be approved for use in the Hickory Run Forest subdivision upon issuance of a permit under ordinance of this township and pursuant to rules, regulations and standards of the Pennsylvania Department of Health, all as required under the Pennsylvania Sewage Facilities Act.

A fee of \$30.00 for each permit issued under the township ordinance will be required.

PENN FOREST TOWNSHIP
BOARD OF SUPERVISORS

By: *[Signature]*
Secretary

GOVERNMENT'S EXHIBIT 8A

STATEMENT OF RECORD, PAGES 11 AND 12

EXHIBIT 8
U. S. DIST. COURT
S. D. OF N. Y.

8 A

as service is not available in the sub-
division.

2. Not applicable.
3. Not applicable.
4. Not applicable.
5. Not applicable.
6. Supporting Documentation
 - (a) not applicable.
 - (b) not applicable.
 - (c) not applicable.

D. Telephone

1. Telephone service is supplied by Bell Telephone of Pennsylvania.
2. Supplier is a public utility and is regulated by the State.
3. Telephone facilities have not been extended to the individual lots.
4. All costs for telephone extensions are borne by buyer in accordance with line extension rules and regulations.
5. Not applicable.
6. Supporting Documentation
 - (a) copy of letter from telephone company dated May 5, 1971 (Refer to PART VIII E (b) (a) previous consolidation)
 - (b) not applicable.
 - (c) not applicable.

E. Sewage Disposal

1. Sewers are not available in the sub-division.
2. Not applicable.
3. Not applicable.
4. Not applicable.
5. Not applicable.
6. Septic tanks are to be used for all lots in the subdivision.
7. The estimated average cost of installing a septic tank in the subdivision is approximately \$300.00 (Refer to previous consolidation) PART VIII E (7)
8. This method of sewage disposal has been approved by the Penn Forest Township Supervisors under ordinance of the township and pursuant to rules and regulations and standards of Pennsylvania Department of Health.
9. The State Health Department requires percolation tests to determine suitability for the use of septic tanks. The developer's engineers have made such tests and the report of those tests is attached hereto in the exhibit shown. PART VIII E (9)
(Refer to previous consolidation)

10. Supporting Documentation
 - (a) not applicable.
 - (b) letter from Penn Forest Township Supervisors dated May 3, 1971 (Refer to previous consolidation)

EXHIBIT

PART VIII
E (10) (b)

F. Drainage and Flood control

1. Developer's engineers have made on site examinations and are of the opinion that no drainage will be required to render any of the lots suitable for construction purposes.
2. No artificial drains, storm sewers or flood control channels have been installed.
3. It is contemplated that in certain areas it will be necessary to construct drains under streets and roads and it is estimated that this will be done as the roads are constructed and that those drains that are necessary will be installed at no cost of the purchaser.
4. No assurances of completion are made by the developer.
5. Supporting Documentation
 - (a) There are no contracts, bonds or escrow agreements to assure completion.
 - (b) Not applicable.

G. Television

1. Television reception is available without cost to purchaser.
2. Not applicable.

PART IX. RECREATIONAL AND CONDOM FACILITIES

- A. No provision has been made for the installation of any recreational facilities.
 1. Not applicable.
 2. Not applicable.
 3. Not applicable.
 4. Not applicable.

- B. Not applicable.

PART X. MUNICIPAL SERVICES

- A. Fire Protection

GOVERNMENT'S EXHIBIT 9A

PROPERTY REPORT, PAGE 3

USA 316-475
(ED 4-15-71)

GOVERNMENT'S

EXHIBIT ~~IX~~

U. S. DIST. COURT

S. D. OF N. Y.

9A

FPI 811-6 8 74 304 2001

(3)

recreational facilities currently available (e.g., sports, beaches, etc.). State any costs or assessment or lessee.

no recreational facilities available to this subdivision with the exception of television.

ies are proposed or partly completed, state promised date, provisions to assure completion, and all estimates or assessments to buyer or lessee. If there are no to assure completion, so state.

Not applicable.

10. State whether the following are now available in the subdivision: Garbage and trash collection, sewage disposal, paved streets, electricity, gas, water, telephone. If yes, state any costs to buyer. If proposed or partly completed, state promised completion date, provisions to insure completion and all costs including maintenance costs to buyer.

(a) GARBAGE AND TRASH COLLECTION

Garbage and trash collection is available in the subdivision through the services of Penn Forest Township. This service is provided free to the lot owner by the township.

(b) SEWAGE DISPOSAL

Sewage disposal is provided by septic tanks to be constructed by the buyer at the estimated average cost of \$600.00, and present price levels. Developer has been advised by its consulting engineer that such method of sewage disposal is acceptable for the subdivision under current state and local health regulations. Developer has also been advised that in some instances additional corrective work in the form of construction of a sand filter bed may be necessary to permit installation of a septic tank. Such additional work may bring the total cost of sewage facilities to \$1,200. Prior to installation of septic tanks or other on-lot sewage disposal systems, a permit must be obtained from local authorities. Buyer should determine the availability of such a permit for his lot from such authorities.

The developer has obtained a letter from the Penn Forest Township Supervisors that the use of septic tanks and other on-lot sewage disposal facilities will be approved for use in Hickory Run Forest subdivision upon issuance of a permit. Under ordinance of the township and pursuant to rules, regulations and standards of the Penn. Department of Health, all as required under the Penn. sewage facilities act, a fee of \$20.00 for each permit issued under the township ordinance will be required.

(c) STREETS

Streets in the subdivision have been completed. Cost of maintaining the roads and streets is to be borne by the lot owner out of the annual assessment levied by the developer or lot owners association which is \$40.00 per year per lot.

A 157

GOVERNMENT'S EXHIBIT 32A

LETTER DATED MAY 4, 1971

USA 33a - 476
(ED. 4-23-71)

GOVERNMENT'S
EXHIBIT *25*
U. S. DIST. COURT
S. D. OF N. Y.

32A

FPI ME-4 B-74 30M 2001

EBECO ASSOCIATES, INC. P.O. BOX 534 HAZLETON

CONSULTING ENGINEERS • SURVEYORS • DESIGNERS

May 4, 1971

Pocono International Corporation
Penn Forest Township
Carbon County, Pennsylvania

Dear Sirs,

My investigation of the soils appearing at Hickory Run Forests, Carbon County, Pennsylvania, and percolation tests conducted by me at various locations over the 820 acre tract indicates the following relative to sub-surface disposal of sewage effluent:

Percolation tests show a rate of fall in minutes per inch from 15 minutes per inch to 55 minutes per inch.

1. U. S. Department of Agriculture, Soil Conservation Service, Soil Survey, Carbon County Pennsylvania, Dated November, 1962.
2. Commonwealth of Pennsylvania, Department of Environmental Resources, Standards for Design and Construction of Sepsic Tanks and Tile Fields.

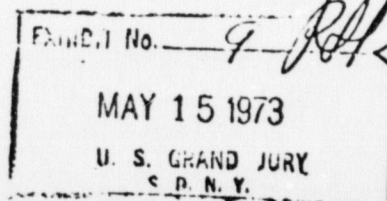
Based upon review of the above sources and field investigation, it is my opinion that on-site sewage disposal systems are practical and feasible, provided the procedures standards are strictly adhered to. These standards include aerated tanks and subsurface sand filter beds where necessary. The estimated cost of such system for each lot, under average conditions, would be \$900.00 to \$1,200.00.

Very truly yours,

Joseph Michel

Joseph Michel, P.E.

JM/rpc



A 158

GOVERNMENT'S EXHIBIT 33

LETTER DATED MAY 25, 1971

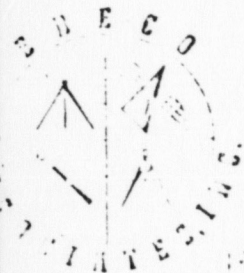
GOVERNMENT'S

EXHIBIT 33

U. S. DIST. COURT

S. D. OF N. Y.

33



FINECO ASSOCIATES, INC. P.O. BOX 534 HAZLETON, PA. 18201 717-455-7156

CONSULTING ENGINEERS • SURVEYORS • DESIGNERS • PLANNERS

May 25, 1971

Carbon County Planning Commission
Court House Annex
Jim Thorpe, Pennsylvania 18229

Attention: Mrs. Agnes T. McCartney
Executive Director

Reference: Hickory Run Forests Development
Penn Forest Township

Subject: Pennsylvania Department of Environmental
Resources Review, Mr. Gerald W. Wascavage,
Sanitarian

Dear Mrs. McCartney,

Enclosed please find a copy of an April 28, 1971 letter from Mr. Gerald W. Wascavage to Mr. George L. Spayd, representing the developers of Hickory Run Forests. This letter sets the requirements necessary before a review of the development can be made by the Department of Environmental resources.

Recently, the developers of Hickory Run Forests have made a contribution towards a master plan study of sewage by the Penn Forest Township Engineers, to the Penn Forest Township Supervisors. What we are interested in knowing is whether this study will suffice for the Department of Environmental Resources, or will the developer still be required to perform a study for this development only?

I am looking forward to your reply and comments.

Very truly yours,

[Signature]
George L. Spayd, P.E.

Enclosure

cc: Mr. C. H. H. H. H. H.

GOVERNMENT'S EXHIBIT 34

LETTER DATED JUNE 25, 1971

GOVERNMENT'S

EXHIBIT 34

U. S. DIST. COURT

S. D. OF N. Y.

34

EBECO ASSOCIATES, INC. P.O. BOX 534 HAZI

CONSULTING ENGINEERS • SURVEYORS • DESIGNERS

June 25, 1971

MEMO TO: Mr. Charles Goldberg
 Mr. Richard Poritzky
 Mr. Edward Leventhal

SUBJECT: Hickory Run Forests

FROM: JOSEPH MICHEL, P.E.

Gentlemen,

I am writing this memo to clarify any misunderstandings which may have been created through verbal conversations concerning the above referenced development.

Item 1: Mrs. Agnes McCartney, Executive Director of the Carbon County Planning Commission has stated that the plan of Hickory Run Forests will be reviewed next Tuesday, June 29, 1971 and that anyone who wishes to be in attendance is welcome. Subsequently, Mr. Leventhal and I plan to attend. Mrs. McCartney also stated that no exceptions will be made and the plan will definitely not be reviewed before the scheduled Tuesday meeting.

Item 2: Mrs. McCartney has stated that at this stage in the development it is not necessary to perform any percolation tests due to the fact that it is Carbon County's policy to provide a copy of the plot plan for the United States Department of Agriculture Soil Conservation Service in Stroudsburg. Mr. James Johnson of the Soil Service will then review the area and provide his recommendations on the soils as far as on-lot sewage disposal systems are concerned.

Item 3: I have just spoken with Mr. Harry Heydt, Penn Forest Township Enforcement Officer, who stated that at this time it is not necessary to perform individual percolation tests. What he did suggest is if the Soil Conservation Service provides a report that is not too favorable for on-lot systems, at this time he would perform tests at various locations on the tract to show that the soil is suitable.

I certainly hope that this memo clears any questions on the above referenced matters.

JPM: 4 6 74 30M 2001

Jury

Tottville Office
420 North Centre Street
Tottville, Pennsylvania - 17901
April 28, 1971

Mr. George L. Spayd
George L. Spayd & Associates, Inc.
Inter-Voi Inc.
1714 Walnut Street
Philadelphia, Pennsylvania 19103

Wickory Run Forest
Proposed Subdivision
Penn Forest Township
Carbon County

This office has received a request from the Carlton County Planning Commission to review the subject proposed subdivision in regard to water supply and sewage disposal facilities..

In order to properly conduct a review it will be necessary for you to submit to this office a feasibility report prepared by a registered professional engineer or registered architect. The feasibility report should contain the following information:

1. The Department will give consideration to the method of sewage disposal and water supply in the following order of preference:
- a. Connection to an approved public sewerage system and public water supply system.
 - b. Connection to a public water supply and a private sewage treatment facility.
 - c. Connection to an approved public sewerage system and individual water supplies.
 - d. Connection to a private sewage treatment facility and individual water supplies.
 - e. Connection to individual sewage disposal systems and individual water supplies.
1. If connection to a public sewerage system or con-

EXHIBIT No. 4
MAY 1 - 1973
U. S. GRAND JURY
S. D. N. Y.

Ltr to Mr. George L. Gayd Cont'd.

Page 2.

struction of a private sewage treatment facility is not feasible, recommendations will be made concerning the suitability of the soil for sub-surface sewage disposal. Soil studies for the proposed use of sub-surface sewage disposal systems must be conducted by the engineer or architect. Percolation tests must be conducted in accordance with the standards of the Pennsylvania Department of Environmental Resources. There shall be a minimum of one (1) percolation test holes per acre. Soil logs shall be conducted to provide information to a depth of four (4) feet below the bottom of the proposed leaching area. There shall be a minimum of one (1) soil log per five (5) acres. Core borings, basement excavations, high-way cuts, recent well logs, excavated holes, or rock soundings may be acceptable. Field work sheets of percolation test data must be submitted. Soil survey information must be overlaid on plot plans of the proposed subdivision and topographic maps of the area and having the location of soil tests clearly marked. A listing of all soils in the area of the proposed subdivision with statements in regard to the soil characteristics that affect the infiltration of septic tank effluent must also be submitted with the overlays.

2. Where individual water supplies are to be used, the lot sizes must be designed to provide a minimum distance of one hundred (100) feet between the well and the leaching area for the sub-surface sewage disposal system. Individual water supplies must be constructed in accordance with the minimum standards of the Pennsylvania Department of Environmental Resources.

- II. The feasibility report must also include, but is not limited to, the following pertinent information:
 - a. Anticipated rate of building (approximate number of homes to be built per year).
 - b. Approximate average cost per home.
 - c. For unit costs for sub-surface sewage disposal and per unit costs for connection to public sewers or provision of private sewage treatment facilities.

Ltr to Mr. George L. Spayd Cont'd.

Page 3.

- d. Whether or not the subdivision is a portion of a larger tract which is to be further sub-divided.
- e. Indicate whether the tract is located in an area which has been studied or proposed for study for the feasibility of public sewers.
- f. An opinion from the engineer or architect as to whether it is or is not economically feasible to connect to public sewers or provide private sewage treatment facilities.
- g. Factors, other than costs, adversely affecting the extension of public sewer lines or provision of private sewage treatment facilities.

Upon receipt of the afore-mentioned information a review will be conducted at which time comments will be made to the Carbon County Planning Commission. Additional information may be requested if it is determined that the submitted data is inadequate or insufficient to formulate valid recommendations.

If you should have any questions in regard to this matter, please feel free to contact this office.

Very truly yours,

GERALD W. WASSAVAGE
Sanitarian

cc: Mrs. Agnes McCartney, Director
Carbon County Planning Commission

G.W.W.

A 163

GOVERNMENT'S EXHIBIT 36

LETTER DATED MAY 12, 1971 AND ENGINEER'S REPORT

GOVERNMENT'S

EXHIBIT/D

U. S. DIST. COURT

S. D. OF N. Y.

36

EX-101 4-24-71

Mr. Gerald Wascavage
Dept. of Environmental Resources
420 N. Centre
Pottsville, Pa.

Dear Mr. Wascavage:

Enclosed you will find the engineer's reports of
our tract of land on Route 903.

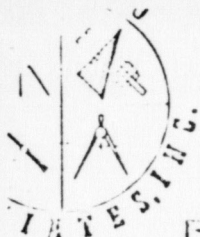
Sincerely yours,

POCONO INTERNATIONAL CORP.

Edward Leventhal
BY: EDWARD LEVENTHAL
Secretary

ED:irg

Enclosure



A 164

Government's Exhibit 36

EBECO ASSOCIATES, INC. P.O. BOX 534 HAZLETON, PA. 18201 717-455-7156

CONSULTING ENGINEERS • SURVEYORS • DESIGNERS • PLANNERS

May 4, 1971

Pocono International Corporation
Penn Forest Township
Carbon County, Pennsylvania

Dear Sirs,

My investigation of the soils appearing at Hickory Run Forests, Carbon County, Pennsylvania, and percolation tests conducted by me at various locations over the 820 acre tract indicates the following relative to sub-surface disposal of sewage effluent:

Percolation tests show a rate of fall in minutes per inch from 15 minutes per inch to 55 minutes per inch.

1. U. S. Department of Agriculture, Soil Conservation Service, Soil Survey, Carbon County Pennsylvania, Dated November, 1962.
2. Commonwealth of Pennsylvania, Department of Environmental Resources, Standards for Design and Construction of Sepsic Tanks and Tile Fields.

Based upon review of the above sources and field investigation, it is my opinion that on-site sewage disposal systems are practical and feasible, provided the procedures standards are strictly adhered to. These standards include aerated tanks and subsurface sand filter beds where necessary. The estimated cost of such system for each lot, under average conditions, would be \$900.00 to \$1,200.00.

Very truly yours,

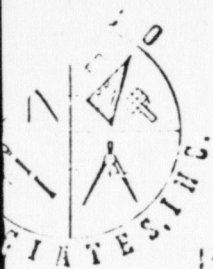
Joseph Michel

Joseph Michel, P.E.

JM/cpc

3

MAY 14 1971



A 165

Government's Exhibit 36

HBECO ASSOCIATES, INC. P.O. BOX 534 HAZLETON, PA. 18201 717-455-7156

CONSULTING ENGINEERS • SURVEYORS • DESIGNERS • PLANNERS

May 10, 1971

Pocono International Corporation
Penn Forest Township
Carbon County, Pennsylvania

Dear Sirs,

My investigation and study for wells at Hickory Run Forest, Carbon County; with the following reports, are relative to the availability and adequacy of potable water.

- 1) Commonwealth of Pennsylvania, Department of Internal Affairs, Topographic and Geologic Survey Bulletin No. 4, Ground Water in Northeastern Pennsylvania, Dated 1957.
- 2) United States Department of Agriculture, Soil Conservation Service, Soil Survey of Carbon County, Pennsylvania, Dated November, 1962.

In "Ground Water in Northeastern Pennsylvania" by Stanley W. Lohman, published by the Commonwealth of Pennsylvania, Department of Internal Affairs, it is noted that wells in the area of Hickory Run Forest are developed in the "Catskill continental group". The author indicated the Catskill group yields moderate to exceptionally large supplies of very soft water to drilled wells many of which are less than 100 feet deep" and, "Most of the other wells are used only for domestic purposes and yield adequate supplies of very good water".

Based on the above, it is my opinion there is adequate potable water for the anticipated population at Hickory Run Forest. The estimated cost of the average depth of 100' for the individual wells, including drilling, casing, pump and appurtenances, is \$300.00 to 1,000.00.

Very truly yours,

Joseph Michel
Joseph Michel, P.E.

JM/roc

MAY 14 1971

Government's Exhibit 36

Sheet 1 of 6

Pocono International Corporation

Penn Forest Township, Carbon Co., Pa.

1971

Government's Exhibit 36

Sheet 2 of 6

JO ASSOCIATES, INC. - ENGINEERS

Pocono International Corporation

Penn Forest Township, Carbon Co., Pa.

May 14 1971

Government's Exhibit 36

Sheet 3 of 6

Pocono International Corporation

462	Name & Location
-----	-----------------

Penn Forest Township, Carbon Co., Pa.

Joseph Michel, P.E.

Hole	Time Hr/Min	Time Elapsto	Dist to Wat	Drop	Rate of Fal	Remarks
No. 3	9:55	30 Min	25 1/4	2 1/4	13	Hole Dry After Overnight Soaking
	10:25		23"			
30" Deep	10:25	30 Min	24 3/4	2 1/4	13	Drop Measured in Inches, Rate of Fall in Minutes per Inch
	10:55		22 1/2			
	10:55	30 Min	23 1/4	2"	15	
	11:25		21 1/4			0" - 6" Brown Topsoil and Dark Brown Organic Matter
	11:25	30 Min	23"	2"	15	
	11:55		21"			6" - 30" Stony Silt Loam, Brownish Gray with Coarse Fragments
	11:55	30 Min	24 5/8	2 1/8	14	
	12:25		22 1/2			
	12:25	30 Min	23 1/2	2"	15	
	12:55		21 1/2			
	12:55	30 Min	24 1/2	2"	15	
	1:25		22 1/2			
	1:25	30 Min	24	2 1/8	14	
	1:55		21 7/8			

Government's Exhibit 36

Sheet ⁴ of ⁶

462 Name & Location

Pocono International Corporation.

Joseph Michel, P.E.

Penn Forest Township, Carbon County, Pa.

SEP 14 1971

Government's Exhibit 36

Sheet 6 of 6

Penn Forest Township, Carbon Co., Pa.

11-1-1971

A 171

Government's Exhibit 36

(PERCOLATION TEST REPORT)

Sheet 6 of 6

J. ASSOCIATES, INC. - ENGINEERS

62 Name & Location

Pocono International Corporation

Joseph Michel, P.E.

Penn Forest Township, Carbon Co., Pa.

Hole	Time Hr/Min	Time Elap	Dist to Wat	Drop	Rate of Fall	Remarks
6.	10:10	30 Min	24"			
	10:40		23"	1"	30	No Water in Hole After Over- night Soaking
Drop	10:40		25 1/2	7/8"	34	
	11:10	30 Min	24 5/8			Drop Measured in Inches. Rate of Fall in Minutes per Inch
	11:10		23 1/4	7/8"	34	
	11:40	30 Min	22 3/8			
	11:40		23 3/4			0" - 6" Brown Topsoil and Dark Brown Organic Matter
	12:10	30 Min	23	3/4"	40	
	12:10		23 1/2			
	12:40	30 Min	22 5/8	7/8"	34	6" - 30" Very Stony Loam - Gravelly, Reddish Brown
	12:40		24 1/4			
	1:10	30 Min	23 1/2	3/4"	40	
	1:10		24	7/8"	34	
	1:40	30 Min	23 1/8			
	1:40		25 5/8			
	2:10	30 Min	24 3/4	7/8"	34	

MAY 14 1971

A 172

GOVERNMENT'S EXHIBIT 37
LETTER DATED MAY 26, 1971

GOVERNMENT'S

EXHIBIT ~~75~~
U. S. DIST. COURT
S. D. OF N. Y.

37

Pottsville
420 North
Pottsville
May 26, 1971

FPI-M1-4.8-74-30M-2001

Mr. Edward Leventhal, Secretary
Pocono International Corporation
927 Huntingdon Pike
Huntingdon Valley, Pennsylvania 19006

RE: Hickory Run Forest (Proposed
Subdivision)
Penn Forest Township
Carbon County

Dear Mr. Leventhal:

Please be advised that information submitted in regard to the proposed subdivision has been reviewed and found to be lacking in essential requested information necessary for this office to make a recommendation to the Carbon County Planning Commission.

It is requested that you provide this office with a feasibility report prepared by a registered professional engineer concerning the method of sewage disposal and water supply to be provided. The Department will give consideration to those facilities in the order of preference itemized in my letter of April 28, 1971. It is also requested that the format set forth in letter of April 28, 1971 be adhered to in preparing the feasibility report.

If you should have any questions in regard to this matter, please feel free to contact this office.

Very truly yours,

GERALD W. MASCAVAGE
Sanitarian

GW:ALC

EXHIBIT No. <u>5</u>
MAY 1 - 1973
U. S. GRAND JURY S. D. N. Y.

GOVERNMENT'S EXHIBIT 38

LETTER DATED OCTOBER 20, 1971

USA 33a-47b
(ED. 4-23-71)

GOVERNMENT'S

EXHIBIT ~~3~~

U. S. DIST. COURT

S. D. OF N. Y.

38

Pottsville Office
420 North Centre Street
Pottsville, Pennsylvania 17901
October 20, 1971

Mrs. Agnes T. McCartney, Executive Director
Carbon County Planning Commission
Court House
Jim Thorpe, Pennsylvania 18229

RE: Hickory Run Forest Sub-
division
Fern Forest Township

Dear Mrs. McCartney:

As you know, the policy of the Department is to base recommendations for sewage disposal and water supply on information submitted in accordance with the "Architects and Engineers Guide". A feasibility study and report prepared by a registered engineer is required. We notified the developer of this requirement on April 28, 1971 and again on May 26, 1971. The only data received to date relates to soil suitability for on-let subsurface sewage disposal. This does not satisfy the requirement for a feasibility study. I will review the soils data and comment, as you requested, but the subdivision cannot be recommended for approval until a feasibility study is completed and an acceptable proposal for sewage disposal and water supply is presented.

The Fern Forest Township supervisors have engaged Russell E. Neal, P.E. and Spotts, Stevens, and McCoy, Inc. to jointly study and develop a coverage plan for the township. I understand that land developers within the township have been notified of this project. There should be close coordination between the township study and the proposal for Hickory Run Forest.

According to the "Soil and Water Management Inventory and Evaluation" prepared by the Soil Conservation Service, all soils on the tract have severe limitations for sewage effluent disposal except one. This is a small area of Hazleton very stony loam located in the southeastern corner of the second section. To me this report clearly indicates that conventional subsurface sewage disposal systems should not be considered for this subdivision. The "Recommendations and alternatives" in the SCS report appear to be contradictory and misleading as they relate to pollution control. I know of no conventional subsurface sewage disposal system that can be expected to function under extremely stony, slowly permeable, seasonal high water table, and shallow soil conditions.

Ltr to Mrs. Agnes T. McCartney Cont'd.

Page 2.

Development of Hickory Run Forest subdivision should be postponed until an acceptable proposal for sewage disposal and water supply has been submitted.

Very truly yours,

EDWARD C. JONES
Supervising Sanitarian

cc: L. Kuchinski, Sewage Facilities Coordinator, P.D.E.R.
Tocco International Corp.
Er. F. Glade Loughry, Soil Scientist, P.D.E.R.

Encls: Plot plan
Copies of Corres.
Architects & Engineers Guide

ECJ:ams

A 175

GOVERNMENT'S EXHIBIT 60

SOILS TEST REPORT, MAY 1, 1971

GOVERNMENT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
60

15 53
HICKORY Run Forest
PENN FOREST TWP.
CARBON CO., PA.

MAY 1, 1971

Soils Suitability For HOME
Sewage Disposal System

Section 7-B-

Acres - 214 Planned Lots - 166 Acres

Acres	Soils	Permeability	Seasonally High water	Depth To Bedrock
153	LKD	well Drained (.63-2.0)	3' +	1 1/2 to 3'
25	McB	well Drained (.63-2.0)	3' +	3' to 25'
3	McD	"	"	"
166				

Septic Tanks - Tile field or Sump pits

Section 5-6

Acres - 230 Planned Lots - 150 Acres

<u>Acres</u>	<u>Soils</u>	<u>Per.</u>	<u>H.W.T.</u>	<u>D. to B. Rock</u>
25	ARB	Seasonal Poorly Drained (.02-.63)	Seasonal	3'-18"
10	DSB	Moderately Well Drained (.2-.63)	2'	4'-25"
35	HvB	Well Drained (.63-2.00)	3'	4'-25"
5	LKD	" "	(.63-2.00)	3'+ 1 1/2'-3'
25	McB	" "	(.63-2.00)	3'+ 3'-25"
20	McD	" "	(.63-2.00)	3'+ 3'-25"
30	SMB	Poorly Drained (.2-.63)	Seasonal	3'-20"
150				

85 Acres Septic Tanks - Tile Field or Scepage beds30 Acres Septic Tanks - Standard Fields or Sand Beds35 Acres Aerobic Tanks - Sand Beds

Section

1-2-3-4

Acres. 249 Planned Lots 128 Acres

<u>Acres</u>	<u>Soils</u>	<u>Per</u>	<u>H.W.T.</u>	<u>D. to B. d. ft.</u>
2	AcB	mod. well Drained (.2-.63)	1 1/2'	3'-30'
31	AcB	Poorly Drained (.2-.63)	Seasonal	3'-18'
6	McD	Well Drained (.63-2.00)	3'+	1 1/2'-3'
35	(McB	" "	" 3'+	3'-25'
10	McD	" "	" 3'+	3'-25'
27	Pd	Poorly Drained (1.0-2)	Seasonal	4'-30'
15	(SmB	Poorly Drained (.2-.63)	Seasonal	3'-20'
2	VEB	(76.2)	None	0-20'
128				

51 Acres Septic Tanks - Tile Field or Sumpage Beds

17 Acres Septic Tanks - Sumpage Beds or Sand Beds

33 Acres Septic Tanks - Sand Beds

27 Acres Septic Tanks - Evapo-Transpiration Beds

A 178

Government's Exhibit 60

Section A-B

Acres - 119 Planned lots 58 Acres

<u>Acres</u>	<u>Soils</u>	<u>Per.</u>	<u>H.W.T.</u>	<u>Depth to B-Box</u>
27	DED	Well Drained (2.0-6.3)	3'±	2'-3'
24	DEF	"	"	2'-3'
5	H-TB	"	(6.3-2.0)	4'-25'
<u>58</u>				

5 Acres - Septic Tanks - Tile Fields or Scrape Pits

53 Acres - Septic Tanks - Standard Fields or Sand Beds

Section C

27 Acres

Planned lots - 27 Acres

<u>Acres</u>	<u>Soils</u>	<u>Per.</u>	<u>L.W.T.</u>	<u>D to Red P. ell</u>
2	AcB	mod well Drained (.2--.63)	1 1/2'	3'-30'
7	AcB	Poorly Drained (.2--.63)	Seasonal	3'-18'
2	DAT	well Drained (.2-6-3)	3 1/4'	2'-3'
11	LrA	Poorly Drained (.2)	Seasonal	3'-18'
2	McB	well Drained (.63-2.00)	3 1/4'	3'-25'
3	VeB	(.76-2)	None	0'-20'
27				

2 Acres Septic Tanks - Tile Fields or Seepage Beds

5 Acres Septic Tanks - Standalone Fields or Sand Beds

9 Acres Aerobic Tanks - Sand Beds

11 Acres Aerobic Tanks - Evapo-Transpiration Beds

A 180

Government's Exhibit 60

TOTAL Acres 839 Planned lots 529 Acres

Septic Tanks - Tile Fields & Sepage Beds 309 Ac

Septic Tanks - Standard Fields & Sand Beds 105 Ac

Aerobic Tanks - Sand Beds 77 Ac

Aerobic Tanks - Evapo-Transpiration Beds 38 Ac

A 181

DEFENDANTS' EXHIBIT B

LETTER DATED JANUARY 31, 1973

EXHIBIT B
U. S. DIST. COURT
S. D. OF N. Y.

Room 1704, State Office Building
Philadelphia, Pennsylvania 19130
Telephone (215) 238-6596

January 31, 1973

FPI 81-12 6-73-10W 1510

Mrs. Mary Donaldson
HUD, Interstate Land Sales
Room 9262
451 Seventh Street, S.W.
Washington, D.C. 20411

Re: Penn Forest Township
Carbon County

Dear Mrs. Donaldson:

On January 26, 1973, the Department of Environmental Resources transferred the Administration of the Sewage Facilities Act away from Penn Forest Township. This action was taken because twenty-eight sewage permits were improperly issued for lots located in Hickory Forest, a sub-division located in Penn Forest Township. The permit issuance was improper in that no supporting applications were ever completed for any of the twenty-eight lots. The Department is now about to do a soil suitability study and if the soils in fact are unsuitable (75% of the soils in the area are mapped as unsuitable) the Department will revoke the permits or take other appropriate action.

Until the Administration of the Act is vested once again in the local Township enforcement officer, our Department will issue all permits.

The sub-division affected by the transfer of Administration are:

Hickory Run Forest
Bear Creek Lakes
Indian Mountain Lakes
Mount Pocahontas Lakes
Towamensing Trails

I bring this Departmental action to your attention so that you might exercise whatever HUD enforcement tools you have.

Very truly yours,

Dennis M. Coyne
Special Assistant Attorney General

DMC:cr

MAR 14 1973

A 182

DEFENDANTS' EXHIBIT D

LETTER DATED JUNE 12, 1973

COMMONWEALTH OF PENNSYLVANIA



DEPARTMENT OF ENVIRONMENTAL RESOURCES
Room 1704, State Office Building
Philadelphia, Pennsylvania 19130
Telephone (215) 238-6596

EXHIBIT A
U. S. DIST. COURT
S. D. OF N. Y.

1

FPI-MI-12 6-75-10M-1510

June 12, 1973

Mr. Raymond Welsh
HUD, Office of Interstate
Land Sales Registration
Room 9264
Washington, D.C. 20410

Re: Hickory Run Forest
Penn Forest Township
Carbon County, Pa.

Dear Mr. Welsh:

Please be advised that the transfer of the administration of the Pennsylvania Sewage Facilities Act ("Act") from Penn Forest Township to the Department of Environmental Resources has been appealed to the Environmental Hearing Board by the Township. A hearing on the appeal has been continued pending agreement between the Township and the Department to a stipulation to enter a consent adjudication. The Department will continue to administer the Act until such time as the administration is transferred back to the Township.

The Department has characterized certain soil types as being generally suitable or unsuitable for standard subsurface sewage disposal, that is, generally for standard septic tank and tile field systems. Soils are mapped by the USDA, and these soil surveys are used by the Department to identify generally the soil types in any one area. Where the survey maps an area as having soils characterized by the Department as generally unsuitable, the approving body will not issue a standard subsurface sewage disposal permit without first requiring that a soils expert make an inspection to determine whether the soils on the applicant's lot are, in fact, suitable or unsuitable. However, the soil surveys are generally accurate and the soils characterized as unsuitable by the Department do have severe limitations. Generally speaking, then, an area mapped as having unsuitable soils will in fact be found unsuitable for a standard septic tank and tile field installation, and such a permit will not be issued.

JUN 18 1973

Page 2

June 12, 1973

Mr. Raymond Welsh

The Rules and Regulations of the Department do provide for alternate systems other than the standard septic tank and tile field system. Permits for such alternate systems require the prior approval of the Department before a local township may issue such a permit. The Department has approved very few alternate systems in Carbon County.

Seventy-five percent of the area of Hickory Run Forest subdivision is mapped as having soils characterized by the Department as unsuitable for standard subsurface sewage disposal. Inspections of the lots mapped as unsuitable will generally reveal soils that are in fact unsuitable and, accordingly, permits for standard septic tank and tile field systems will not be issued.

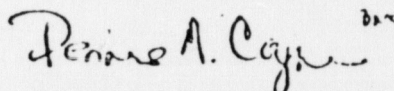
Penn Forest Township itself submitted to the Department an Engineering Study and Financial Feasibility Report for Sewage, ("Report"). The Report was dated July 17, 1972, and made reference to the suitability of soils within Penn Forest Township for on-lot sewage disposal. At page 3 of the Report the following information appears:

<u>"Development Name</u>	<u>Percentage NOT suitable for on-lot sewage disposal</u>
Bear Creek Lakes	55%
Hickory Run Forest	75%
Towamensing Trails	35%
Mt. Pocohontas	25%
Indian Mt. Lakes	30%" [emphasis added]

The Report which proposed the wide-spread use of holding tanks throughout the Township was not accepted by the Department. The Department, however, takes no exception to the above cited figures as to percentages of soils unsuitable for on-lot sewage disposal.

I hope this letter will be of assistance to you in reference to Hickory Run Forest subdivision. If I can be of further assistance, in reference to this subdivision or any other subdivision located in Pennsylvania, please do not hesitate to contact me.

Very truly yours,



Dennis M. Coyne
Assistant Attorney General

DMC:cr

cc: Ms. Mary Donaldson
bcc: Edward C. Jones

A 34

DEFENDANT'S EXHIBIT N

PENNSYLVANIA SEWAGE FACILITIES ACT MANUAL
COVER, PAGES 109 AND 110

*Druck Potitsky at 11:00 AM
C. G. G. G. G.*

Trailer - 32564033

DEF

EX N ID

Pennsylvania Sewage Facilities Act Manual



PENNSYLVANIA DEPARTMENT OF HEALTH
DIVISION OF SANITATION
DIVISION OF PUBLIC HEALTH EDUCATION

twelve (12) inches of crushed rock or other aggregate material of which six (6) inches must be below and two (2) inches must be above.

Each of the laterals should be laid level in a level bed and should not be more than three (3) feet from the bed sidewall nor should there be more than three (3) feet on either side of the pipe.

If two or more seepage beds are constructed they should be separated by at least six (6) feet of undisturbed earth. The liquid may be distributed to each by means of a distribution box or the beds may be connected in series (See Section 8.3).

THE REGULATION STATES:

- 8.6 Subsurface Sand Filters
- 8.6-1 General

Explanation of the Regulation:

Subsurface Sand Filters are accepted as a means of sewage disposal. They are somewhat similar to the regular absorption trenches except that the filter trenches are deeper, generally wider, and contain a layer of sand added as filtering material. All such systems are to be approved by the Department of Health.

THE REGULATION STATES:

- 8.6-1.1 Subsurface sand filters without underdrains shall meet the following criteria:
 - The first four feet of soil depth shall be unsuitable for the installation of tile disposal fields and seepage beds. The percolation rate of the soil at depths greater than four (4) feet shall be within the range outlined in TABLE IV. The data in TABLE IV shall be used in determining the absorption area require-

ments for the system. Other conditions outlined in Section 1 shall be met.

8.6-2 Construction

- 8.6-2.1 Filter material shall be clean coarse sand all passing a screen having four (4) mesh per inch. The effective size shall be between 0.3 and 0.6 mm with a uniformity co-efficient of not greater than 3.5. Sand shall be placed in the entire bed to a minimum depth of 24 inches.
- 8.6-2.2 The laterals shall be surrounded with two (2) inches of coarse screened gravel or crushed stone of 1/2 to 2 1/2 inch size.
- 8.6-2.3 Slope of the laterals shall be approximately 3 inches in 50 feet (0.5% grade) when dosing tanks are not used and 1 1/2 inch in 50 feet (.25% grade) when dosing tanks are used.
- 8.6-2.4 Laterals shall be perforated pipe or agricultural tile.
- 8.6-2.5 Laterals shall be laid on six (6) foot centers covered with at least six (6) inches of clean fill with all lines located at least 3 feet from the outer edge of the bed.

Explanation of the Regulation:

All such systems are to be approved by the Department of Health.

THE REGULATION STATES:

9. Dosing Tanks

9.1 General

- 9.1-1 A dosing tank shall be used when the total length of the laterals exceeds 500 lineal feet. When the total length of the laterals exceeds 1,000 lineal feet the dosing tank shall be provided with two siphons or pumps dosing alternately and each serving one-half of the leachings system.

- 9.1-2 When the leaching system is a subsurface sand filter, a dosing tank shall be provided when the total area of the filter exceeds 1,800 square feet or the total length of the laterals exceeds 300 lineal feet.

9.2 Construction

- 9.2-1 The dosing tank shall be constructed of materials to the specifications as outlined for septic tanks.
- 9.2-2 An effective overflow to the laterals must be provided.

COURT'S EXHIBIT 3

REDACTED INDICTMENT

Exhibit
EXHIBIT D
U. S. DIST. COURT
S. D. OF N. Y.

3

CHARLES GOLDBERG,

DISTRICT COURT
DISTRICT OF NEW YORK

OF AMERICA,

TIONAL CORPORATION;

Defendants.

INDICTMENT

73 Cr.

630

The Grand Jury Charges:

INTRODUCTION

1. That at all times relevant, POCONO INTERNATIONAL CORPORATION was and is a Corporation organized under the laws of the Commonwealth of Pennsylvania for the purpose, amongst others, of developing certain tracts of rural land situated in the State of Pennsylvania in an area commonly known as the Pocono Mountains, and particularly for the development of an area known as Hickory Run Forest situated in Carbon County, Penn Forest Township.

2. CHARLES GOLDBERG, at all times relevant, was and is the principal stockholder, Director and Officer of POCONO INTERNATIONAL CORPORATION, and has directed the activities of that Corporation since its incorporation in September, 1969.

3. The subdivision known as Hickory Run Forest consists of approximately 920 acres, divided into 3 numbered Sections and further subdivided into 966 lots. Prior to its acquisition, subdivision and subsequent sale by POCONO INTERNATIONAL CORPORATION the acreage which now forms Hickory Run Forest was a mostly wooded, gently rolling, vacant and rural countryside, bordered by Hickory Run State Park and other public lands used for municipal watersheds.

4. Adequate provision for sanitary disposal of household waste and sewage is essential for the development of

rural lands into a subdivision containing numerous building lots. Household waste and sewage can be disposed of through the construction and use of a central collection and treatment system by the developer, or by the construction of on-site subsurface treatment devices such as a septic tank system. The use of conventional septic tank systems to dispose of human and household waste and sewage is not suitable for most of the building lots in Hickory Run Forest because of the seasonal high-water table and slow permeability, shallowness and stoniness of soil conditions.

5. Non-conventional on-site sub-surface systems for disposal of human and household waste and sewage, such as aeration tanks and sand filter beds, will not function properly where there is a high seasonal water table and are of such an experimental nature that officials of the various Townships of the Commonwealth of Pennsylvania have no authority to approve their use by property owners.

6. Sellamerica, Ltd., at all times relevant, was and is a Corporation organized under the laws of the State of New Jersey in 1971 with principle offices in Englewood, New Jersey, and New York City, New York. Sellamerica was organized for the purpose, amongst others, of selling lots situated in Hickory Run Forest to the residents of the Metropolitan New York City area, including those residents situated in the Southern District of New York. Heinz Eibenstein, also known as Rick Eibenstein, or Ric Of The Poconos, was at all times relevant the principal stockholder, Director and President of Sellamerica, Ltd., and from November 4, 1971 has been the Vice President of POCONO INTERNATIONAL CORPORATION. The aforesaid CHARLES GOLDBERG, at all times relevant, has been the Vice President of Sellamerica, Ltd.

Court's Exhibit 3

7. Sell America, Inc., and Heine Eberstein, agents of POCONO INTERNATIONAL CORPORATION, employed numerous salesmen and telephone solicitors and placed advertisements in newspapers and on radio and television, which were designed to promote and further the sale of building lots in Hickory Run Forest through the use of the aforesaid means of interstate commerce.

COUNTS ONE THROUGH FIFTEEN

8. Each and every allegation of paragraphs 1 through 8 of the INTRODUCTION is hereby repeated, reallocated and incorporated by reference in each of Counts 1 through 15 of this indictment, as though fully set forth therein.

9. That from on or about January 1, 1971 and continuing up until the date of this indictment, defendants CHARLES GOLDBERG and POCONO INTERNATIONAL CORPORATION, devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises from numerous persons residing within the Southern District of New York and such other persons who could be and would be induced by the defendants CHARLES GOLDBERG and POCONO INTERNATIONAL CORPORATION to purchase and agree to purchase real property situated in a subdivision known as Hickory Run Forest from POCONO INTERNATIONAL CORPORATION, well knowing at the time that the said pretenses, representations and promises, which are specifically described in paragraph "12" hereinafter, would be and were false when made and which scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, so devised and intended to be devised by the said defendant POCONO INTERNATIONAL CORPORATION and CHARLES GOLDBERG, was in substance as follows:

10. It was a further part of said scheme for Sellamerica, Ltd. and Heinz Eberstein to be the agents of POCONO INTERNATIONAL CORPORATION for the purposes of promoting and selling lots in Hickory Run Forest to residents of New York City Metropolitan area.

Court's Exhibit 3

11. It was a further part of the scheme that the defendants through their agents, would and did offer for sale, sell and cause to be sold lots and parcels of real property in a subdivision located in Carbon County, Pennsylvania, commonly known as Hickory Run Forest.

12. It was a further part of the scheme that the defendants, and their agents, would and did make the following false and fraudulent pretense, representations and promise that purchasers of lots in the Hickory Run Forest development would be able to dispose of human and household sewage and waste by constructing on-site septic tank systems which would be approved by the Township of Penn Forest.

13. It was a further part of the scheme that on or about the dates hereinafter set forth, in Carbon County and elsewhere in the State of Pennsylvania, the defendants, POCONO INTERNATIONAL CORPORATION and CHARLES GOLDBERG, unlawfully, wilfully and knowingly and for the purpose of executing said scheme and artifice and attempting to do so did place, or cause to be placed, in authorized depositories for mail, certain matter and did cause to be delivered by mail according to the directions thereon, matter addressed as hereinafter set forth, to be delivered by the United States Postal Service and United States Post Office:

Count	On or About	Sender	Addressee
1	August 16, 1972	Charles Goldberg	Sigfried & Nitsa Delgado
2	August 16, 1972	Charles Goldberg	Sigfried & Nitsa Delgado
3	August 22, 1972	Pocono International Corporation	Stephen & Jean Arella
4	August 22, 1972	Pocono International Corporation	Stephen & Jean Arella
5	October 31, 1972	Charles Goldberg	Salvatore & Maria DiMeglio
6	November 7, 1972	National Abstract Company or other agent of Pocono International Corporation	Alexius & Elizabeth Each
7	October 31, 1972	Charles Goldberg	Salvatore & Maria DiMeglio
8	November 7, 1972	National Abstract Company or other agent of Pocono International Corporation	Alexius & Elizabeth Each

A 191

Court's Exhibit 3

Inc	Count	On or About	Sender	Addressee
9		February 15, 1973	National Abstract Company	Zvi Hava
10		February 15, 1973	National Abstract Company	Zvi Hava
11		February 26, 1973	National Abstract Company	Francis Canero
12		February 26, 1973	National Abstract Company	Attilio Perri

COUNT 16

The Grand Jury further charges:

15. On or about the 18th day of July, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a lot described as Lot 25, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a printed Property Report meeting the requirements of 15 U.S.C. §1707 furnished to the purchasers, John and Frances Jordan, in advance of signing a contract and agreement for deed of sale between said purchasers and the seller, POCONO INTERNATIONAL CORP; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 18

The Grand Jury further charges:

17. On or about the 16th day of August, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer, and cause to be sold to Sigfried and Nitsa DelGado a Lot described as Lot 137E, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

Court's Exhibit 3

COURT 19

The Grand Jury further charges:

18. On or about the 16th day of August, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 137B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said lot and the said subdivision, and upon which the purchasers, Sigfried and Nitsa DelGado, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COURT 20

The Grand Jury further charges:

19. On or about the 22nd day of August, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed

was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 129B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1703(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a printed Property Report meeting the requirements of 15 U.S.C. §1707 furnished to the purchasers, Stephen and Joan Arella, in advance of signing a contract and agreement for deed of sale between said purchasers and the seller, POCONO INTERNATIONAL CORP; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 21

The Grand Jury further charges:

20. On or about the 22nd day of August, 1972, and continuing up until the date of this indictment, the defendants, both whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 129B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchasers, Stephen and Joan Arella, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser;

A 196
Court's Exhibit 3

all as here fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged: all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

A 197

Court's Exhibit 3

COURT 26

The Grand Jury further charges:

25. On or about the 31st day of October, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 166, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; nor was a printed Property Report meeting the requirements of 15 U.S.C. §1707 furnished to the purchasers, Salvatore and Maria DiMeglio, in advance of signing a contract and agreement for deed of sale between said purchasers and the seller, POCONO INTERNATIONAL CORP; all in violation of Title 13 U.S.C. §2, Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717,

COURT 27

The Grand Jury further charges:

26. On or about the 31st day of October, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 166, Sections 1 - 4, in Hickory Run Forest, a subdivision

as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said lot and the said subdivision, and upon which the purchasers, Salvatore and Maria DiMeglio, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 16 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 23

The Grand Jury further charges:

27. On or about the 15th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a lot described as Lot 135B, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), ~~IN THAT NO~~

~~IN THAT NO~~
~~IN THAT NO~~
printed Property Report meeting the requirements of 15 U.S.C. §1707 furnished to the purchaser, Zvi Hava, in advance of signing a contract and agreement for deed of sale between said purchaser and the seller, POCONO INTERNATIONAL CORP; all in violation of Title 16 U.S.C. §2, Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 29

The Grand Jury further charges:

28. On or about the 15th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 135b Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchaser, Zvi Nava, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs 1 through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COUNT 30

The Grand Jury further charges:

29. On or about the 26th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold to Francis F. L. Canero a Lot described as Lot 260a, Sections 1 - 4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and

Court's Exhibit 3

During Development in that no Statement of Record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code, all in violation of Title 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COURT 31

The Grand Jury further charges:

30. On or about the 26th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 2603, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchaser, Francis P.L. Canero, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs I through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

COURT 32

The Grand Jury further charges:

31. On or about the 26th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails: to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold to Attilio

A. Perri a lot described as Lot 261B, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3), which Lot had not been registered with the Secretary of Housing and Urban Development in that no statement of record was in effect in accordance with §1704, §1705 and §1706 of Title 15 of the United States Code; all in violation of Title 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(1) and Title 15 U.S.C. §1717.

COUNT 33

The Grand Jury further charges:

32 On or about the 26th day of February, 1973, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4), did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York to sell, offer and cause to be sold a Lot described as Lot 261B, Sections 1-4, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property, by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchaser, Attilio A. Perri, relied, and did engage in a transaction, practice and course of business which operated and would operate as fraud and deceit upon a purchaser, all as more fully and specifically set forth in paragraphs I through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2; Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

Paragraph 41

40. On or about the 7th day of November, 1972, and continuing up until the date of this indictment, the defendants, both of whom were then and at all pertinent times mentioned herein developers as defined in 15 U.S.C. §1701(4) did, within the Southern District of New York, directly and indirectly make use of means and instruments of transportation and communication in interstate commerce and of the mails, to wit: a Deed was mailed from the State of Pennsylvania to the State of New York, to sell, offer and cause to be sold a Lot described as Lot 317, Sections 5 and 6, in Hickory Run Forest, a subdivision as defined in 15 U.S.C. §1701(3); and did employ a device, scheme and artifice to defraud, and did obtain money and property by means of material misrepresentations with respect to information pertinent to the said Lot and the said subdivision, and upon which the purchasers, Alexis and Elizabeth Bach, relied, and did engage in a transaction, practice and course of business which operated and would operate as a fraud and deceit upon a purchaser; all as more fully and specifically set forth in Paragraphs I through 14 of this indictment and here re-alleged; all in violation of Title 18 U.S.C. §2, Title 15 U.S.C. §1703(a)(2) and Title 15 U.S.C. §1717.

Due and timely service of ONE copies
of the within APPENDIX is hereby
admitted this 5TH day of SEPTEMBER 1975

.....
Attorney for APPELLER

